

CHARLES H. CLARK

40 North Kingshighway Boulevard, Apt 12C, St. Louis, MO 63108
(203) 788-4419 | charles.h.clark@wustl.edu

EDUCATION

WASHINGTON UNIVERSITY SCHOOL OF LAW, St. Louis, MO

J.D., expected June 2022 | GPA: 3.60
Certificate for Excellence in Oral Advocacy (2020)
JD Certificate in Public Interest Law
Articles Editor, *Jurisprudence Review*
Note: *How to Do Things with Words: Speech Act Theory and the Law*. Pending 2022
LSAT (November 2018): 174 (99th Percentile)

UNIVERSITY OF HOUSTON, Houston, TX

Graduate Coursework – Philosophy Department – 2015-2016; Teaching Assistant, Fall 2015.

UNIVERSITY OF CHICAGO, Chicago, IL

B.A in Philosophy with General Honors received June 2013 | GPA: 3.52
Thesis: “A New Concept of Rape: The Advantages of the Coercion Model”
Honors and Activities: Dean’s List (2010-2011, 2012-2013); Model United Nations Chair (2009-2011)

LEGAL EXPERIENCE

FIRST AMENDMENT CLINIC AT WASHINGTON UNIVERSITY SCHOOL OF LAW, St. Louis, MO

Student clinic participant, Fall 2021

- Drafted legal documents to be filed in court for clients with First Amendment related issues

LEGAL SERVICES OF EASTERN MISSOURI – NEIGHBORHOOD VACANCY INITIATIVE, St. Louis, MO

Intern, Summer 2021

- Drafted legal documents related to obtaining title of vacant buildings on behalf of neighborhood organizations
- Performed various research tasks and drafted memos to assist the Vacancy Initiative in their work

THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, St. Louis, MO

Intern, Summer 2020

- Wrote memos on legal issues related to individuals alleging discrimination or harassment in employment situations
- Attended depositions and client meetings and participated in strategy meetings and post-mortems

SIDLEY AUSTIN, New York, NY

Paralegal, July 2013-September 2014

- Drafted and revised legal documents for securitization transactions
- Worked closely with attorneys on a variety of multimillion-dollar projects and transaction closings

THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Chicago, IL

Intern, Summer 2012

- Obtained practical experience within the court system through court proceedings, depositions, and settlement hearings
- Conducted numerous interviews with potential class members and witnesses

THE PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA, Washington, D.C.

Investigator, Summer 2010

- Investigated case facts for clients charged with crimes in the District of Columbia
- Interviewed witnesses, served subpoenas, and took statements for attorney supervisor

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<https://acadinfo.wustl.edu/apps/InternalRecord/Default.aspx?PrintPage=y&studentID=479110>

Washington University Unofficial Transcript for: **Charles (Charles) H Clark**

Student ID Number: 479110

Student Record data as of: 2/11/2022 5:27:18 PM

HOLDS - no records of this type found

DEGREES AWARDED

JURIS DOCTOR

Anticipated

MAJOR PROGRAMS

-----Semester-----

Admitted	Terminated	Status	Code	Prime or Joint	Program
FL2019	SP2021	Closed	LW0150	Prime	JURIS DOCTORIS
SU2021		Open	LW0160	Prime	JURIS DOCTOR

ADVISORS - no records of this type found

SEMESTER COURSEWORK AND ACADEMIC ACTION

Note: Courses dropped with a status of 'D' will not appear on your transcript.

Courses dropped with a status of 'W' will appear on your transcript.

FL2019

-----Grade-----

Department	Course	Sec	Units	Opt	Mid	Final	Dean	Dropped	WaitListed	Title
W74 LAW	500D	03	0.0	C		CIP				Legal Research Methodologies I
W74 LAW	500H	03	2.0	C		2.98				Legal Practice I: Objective Analysis and Reasoning (Moul)
W74 LAW	501H	01	4.0	C		3.64				Contracts (Baker)
W74 LAW	507X	01	4.0	C		3.82				Property (D'Onfro)
W74 LAW	515D	02	4.0	C		3.40				Torts (Tamanaha)
			Enrolled Units: 14.0			Semester GPA: 3.53			Cumulative Units: 14.0	Cumulative GPA: 3.53

SP2020

-----Grade-----

Department	Course	Sec	Units	Opt	Mid	Final	Dean	Dropped	WaitListed	Title
W74 LAW	500E	03	1.0	P		P				Legal Research Methodologies II
W74 LAW	500J	03	2.0	C		CR				Legal Practice II: Advocacy (Moul)
W74 LAW	502S	03	4.0	C		CR				Criminal Law (Katz)
W74 LAW	503H	04	1.0	P		CR				Negotiation (Reeves)
W74 LAW	506	04	4.0	C		CR				Civil Procedure (Levin)
W74 LAW	520C	02	4.0	C		CR				Constitutional Law I (Osgood)
			Enrolled Units: 16.0			Semester GPA: 0.00			Cumulative Units: 30.0	Cumulative GPA: 3.53

MSN 0023 SPECIAL NOTE:, During the spring of 2020, a global pandemic required significant changes to coursework. Unusual enrollment patterns and grades may reflect the tumult of the time.

Transcript: Yes Expires 12/31/2999

FL2020

-----Grade-----

Department	Course	Sec	Units	Opt	Mid	Final	Dean	Dropped	WaitListed	Title
W74 LAW	529D	01	2.0	C		3.70				Election Law (Levin)
W74 LAW	549G	01	4.0	C		3.40				Federal Income Taxation (Wiedenbeck)
W74 LAW	609K	01	3.0	C		3.46				Speech, Press & the Constitution (Richards)
W74 LAW	658Z	01	3.0	P		P				Pretrial Practice: Criminal
W75 LAW	617S	01	1.0	P		CR				Jurisprudence Review
			Enrolled Units: 13.0			Semester GPA: 3.49			Cumulative Units: 43.0	Cumulative GPA: 3.51

SP2021

-----Grade-----

Department	Course	Sec	Units	Opt	Mid	Final	Dean	Dropped	WaitListed	Title
W74 LAW	542L	01	3.0	C		3.64				Criminal Procedure: Investigation (Epps)
W74 LAW	601A	01	3.0	C		3.88				Legislation (Magarian)
W74 LAW	613C	01	3.0	C		3.46				Employment Law (Crain)
W74 LAW	651B	01	2.0	C		3.82				Complex Civil Litigation (R. Jackson)

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W74 LAW 806K 01 1.0 P P The Law and Policy of the Rails-to-Trails Conservancy Movement
W75 LAW 617S 01 1.0 P CR Jurisprudence Review
Enrolled Units: 13.0 Semester GPA: 3.69 Cumulative Units: 56.0 Cumulative GPA: 3.57
MSN 8224 REMOTE STUDY, Central Standard Time - (GMT-06:00) Central Time (US and Canada **Transcript: No Expires 12/31/2999**

FL2021

-----Grade-----										
Department	Course	Sec	Units	Opt	Mid	Final	Dean	Dropped	WaitListed	Title
W74 LAW	562C	01	2.0	C		4.00				Ethics and Professionalism in the Practice of Law (Pratzel)
W74 LAW	604C	01	6.0	P		P				First Amendment Clinic
W74 LAW	634D	01	3.0	C		3.64				Federal Courts (Drobak)
W75 LAW	717S	01	2.0	P		CR				Jurisprudence Review
W76 LAW	851S	01	3.0	C		3.58				The American Presidency Seminar (A. Katz)
Enrolled Units: 16.0 Semester GPA: 3.71 Cumulative Units: 72.0 Cumulative GPA: 3.60										

SP2022

-----Grade-----										
Department	Course	Sec	Units	Opt	Mid	Final	Dean	Dropped	WaitListed	Title
W74 LAW	530A	01	3.0	C						Administrative Law (Levin)
W74 LAW	535K	01	3.0	C						Comparative Law (A. Katz)
W74 LAW	547N	01	3.0	C						Evidence (Harawa)
W74 LAW	580T	01	3.0	C						Criminal Procedure: Adjudication (Epps)
W75 LAW	717S	01	2.0	P						Jurisprudence Review
Enrolled Units: 14.0 Semester GPA: 0.00 Cumulative Units: 72.0 Cumulative GPA: 3.60										

OTHER CREDITS - no records of this type found

GPA SUMMARY

----- Semester Units -----											Cumulative Units -----					Level	---- GPA ----	
Semester	Cr. Att.	Cr. Earn	P/F Att.	P/F Earn	Trans.	Grade Pts.	Cr. Att.	Cr. Earn	P/F Att.	P/F Earn	Trans.	Units	Sem.	Cum.	Level			
FL2019	14.0	14.0	0.0	0.0	0.0	49.4	14.0	14.0	0.0	0.0	0.0	14.0	3.53	3.53	2			
SP2020	0.0	14.0	2.0	2.0	0.0	49.4	14.0	28.0	2.0	2.0	0.0	30.0	0.00	3.53	3			
FL2020	9.0	9.0	4.0	4.0	0.0	80.8	23.0	37.0	6.0	6.0	0.0	43.0	3.49	3.51	4			
SP2021	11.0	11.0	2.0	2.0	0.0	121.4	34.0	48.0	8.0	8.0	0.0	56.0	3.69	3.57	5			
FL2021	8.0	8.0	8.0	8.0	0.0	151.0	42.0	56.0	16.0	16.0	0.0	72.0	3.71	3.60	6			
SP2022	0.0	0.0	0.0	0.0	0.0	151.0	42.0	56.0	16.0	16.0	0.0	72.0	IP	3.60	6			

ENROLLMENT STATUS

Semester	Start	End	Enrollment Status	Level	Units	Status Change Date
FL2019	8/26/2019	12/18/2019	Full-Time Student	1	14.0	
SP2020	1/13/2020	5/6/2020	Full-Time Student	2	16.0	
FL2020	8/24/2020	1/10/2021	Full-Time Student	4	13.0	
SP2021	1/19/2021	5/13/2021	Full-Time Student	4	13.0	
FL2021	8/30/2021	12/22/2021	Full-Time Student	5	16.0	
SP2022	1/18/2022	5/11/2022	Full-Time Student	6	14.0	

DEMOGRAPHICS

Birthdate: 10/29/1990 **Race:** 6 - White (Non-Hispanic Origin) **Semester of Entry:**
Birth Place: New York **Entry Status:**
Date of Death: **Anticipated Deg Dt:** 0522
Gender: M **Hispanic:** N **Std Expt Graduation:**
Marital Status: **American** **Frozen Cohort:**
Veteran Code: **Indian:** N **Faculty/Staff Child:**
Locale: **Asian:** N **Alumni Code:**
U.S. Citizen: **Black:** N **Prof. School1:**
Country: **Hawaiian** **Prof. School2:**
Visa Type: **Pacific:** N **Area of Interest:**
Nonresident Alien: **White:** Y **Area of Interest Code:**
Not Reported: N

ADMINISTRATIVE CODES

Type	Value
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Personal Email Address

charleshunnewellclark@gmail.com

HIGH SCHOOL - no records of this type found

PREVIOUS SCHOOLS

Name	State	Code	Type Code	Type	Degree	Degree Date	Discipline Code	GPA	GPA Type	Credit
U Houston Main Cmps*	TX	006870		BA	PHILOSOPHY	0613		352		

**UNIVERSITY EMAIL
ADDRESS:**

charles.h.clark@wustl.edu **FORWARDS TO:** charles.h.clark@email.wustl.edu

THE UNIVERSITY OF CHICAGO

Office of the University Registrar

Chicago, Illinois 60637

OFFICIAL TRANSCRIPT

CHARLES HUNNEWELL CLARK

396335

Student Name

Student Number

DEGREES CONFERRED:

B.A. BACHELOR OF ARTS WITH GENERAL HONORS
PHILOSOPHY
JUNE 15, 2013

TOTAL UNITS TAKEN: 400

PROGRAM START QUARTERS:

AUTUMN 2009 UNDERGRADUATE

GPAS:

COLLEGE CUMULATIVE GPA: 3.522500

PREVIOUS INSTITUTIONS:

DIPL., AMERICAN SCHOOL IN LONDON
LONDON NW8 0NP, UNITED KINGDOM 2009

ACCREDITATION:

PLACEMENT PRE-CALCULUS MATH PASSED AUTUMN 2009
CEEB APE ELECTIVES 200 AUTUMN 2009
CEEB APE PHYSICS 12100-12200-12300 300 AUTUMN 2009
CEEB APE ELECTIVES 300 AUTUMN 2009
CEEB APE 10000-LEVEL PHYSICAL SCIENCES 200 AUTUMN 2009

AUTUMN 2009

BIOS 10130	CORE BIOLOGY 2010	100	A
HUMA 13500	INTRODUCTION TO HUMANITIES-1	100	B
HUMA 19100	HUMANITIES WRITING SEMINARS	000	P
MATH 16100	HONORS CALCULUS-1	100	A
SOSC 12100	SELF, CULTURE AND SOCIETY-1	100	A-
TOTAL UNITS TAKEN: 400			

WINTER 2010

BIOS 15106	PLAGUES: PAST AND PRESENT	100	B
HUMA 13600	INTRODUCTION TO HUMANITIES-2	100	A-
HUMA 19100	HUMANITIES WRITING SEMINARS	000	P
MATH 16200	HONORS CALCULUS-2	100	A-
SOSC 12200	SELF, CULTURE AND SOCIETY-2	100	A-

SPRING 2010

ENGL 25901	AMERICAN MODERN: EXPERIMENTAL FICTION	100	B+
HUMA 13700	INTRODUCTION TO HUMANITIES-3	100	W
MATH 16300	HONORS CALCULUS-3	100	B
SOSC 12300	SELF, CULTURE AND SOCIETY-3	100	B+

TOTAL UNITS TAKEN: 400

AUTUMN 2010

ASLG 10100	AMERICAN SIGN LANGUAGE-1	100	A-
HIST 13500	AMERICA IN WORLD CIVILIZATION-1	100	A
LING 20001	INTRO TO LINGUISTICS	100	A-
PHIL 25000	ANCIENT PHILOS/HIST PHILOS-1	100	A

TOTAL UNITS TAKEN: 400

WINTER 2011

ASLG 10200	AMERICAN SIGN LANGUAGE-2	100	C+
HIST 13600	AMERICA IN WORLD CIV-2	100	A
PHIL 21600	INTRODUCTION TO POLITICAL PHILOSOPHY	100	B
PHIL 26000	HISTORY OF PHILOSOPHY-II	100	W

TOTAL UNITS TAKEN: 400

SPRING 2011

ASLG 10300	AMERICAN SIGN LANGUAGE-3	100	B
FNDL 24301	LUDWIG WITTGENSTEIN: PHILOSOPHICAL INVESTIGATIONS	100	A-
GNDL 10200	PROBLEMS IN THE STUDY OF SEXUALITY	100	A
PHIL 23900	AUSTIN	100	B+

TOTAL UNITS TAKEN: 400

COLLEGE LANGUAGE REQUIREMENT COMPLETED

DEAN'S LIST 2010-11

ISSUED TO: CHARLES HUNNEWELL CLARK

11/01/2014

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SCOTT C. CAMPBELL
UNIVERSITY REGISTRAR



THE UNIVERSITY OF
CHICAGO

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THE UNIVERSITY OF CHICAGO

Office of the University Registrar

Chicago, Illinois 60637

OFFICIAL TRANSCRIPT

CHARLES HUNNEWELL CLARK

396335

Student Name

Student Number

AUTUMN 2011

ENGL 24406	"IMPOSSIBLE" THEATERS	100	A-
GNDR 21906	SEX, DRUGS, AND THE LITERATURE OF AMERICAN ALTERED CONSCIOUSNESS	100	B
GNDR 28605	FEMINIST THEORY	100	A-
PHED 16061	INTRODUCTION TO PILATES	000	P
PHIL 21900	AESTHETICS OF HUME AND KANT	100	A

TOTAL UNITS TAKEN: 400

SPRING 2013

GNSE 29600	FEMINIST PHILOSOPHY	100	B+
HIST 13700	AMERICA IN WORLD CIVILIZATION-3	100	B+
TAPS 10300	TEXT AND PERFORMANCE	100	A-

TOTAL UNITS TAKEN: 300

DEAN'S LIST 2012-13

*** END OF OFFICIAL TRANSCRIPT ***

WINTER 2012

PHIL 21300	TORTURE AND CONTEMPORARY MORAL THOUGHT	100	A-
PHIL 26000	HISTORY OF PHILOSOPHY-II	100	B+
RLST 24304	IMMANUEL KANT'S CRITIQUE OF PRACTICAL REASON	100	A-

TOTAL UNITS TAKEN: 300

SPRING 2012

GNSE 24002	MARRIAGE	100	W
PHIL 20720	ORDINARY LANGUAGE PHILOSOPHY	100	B
PHIL 25209	EMOTION, REASON, AND LAW	100	A-

TOTAL UNITS TAKEN: 300

AUTUMN 2012

PHIL 20100	ELEMENTARY LOGIC	100	A
PHIL 21605	JUSTICE	100	A-
PHIL 23002	PARADOX	100	B+
PHIL 29901	SENIOR SEMINAR I	100	P

TOTAL UNITS TAKEN: 400

WINTER 2013

ENGL 24408	BEFORE AND AFTER BECKETT: THEATER AND THEORY	100	A-
PHIL 29400	INTERMEDIATE LOGIC	100	B+
PHIL 29902	SENIOR SEMINAR II	100	A-

TOTAL UNITS TAKEN: 300

ISSUED TO: CHARLES HUNNEWELL CLARK

11/01/2014

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THE UNIVERSITY OF CHICAGO

Key to Transcripts
of
Academic Records

1. Accreditation: The University of Chicago is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. For information regarding accreditation, approval or licensure from individual academic programs, visit <http://cs.uchicago.edu/policies/disclosures>.

2. Organization: The University of Chicago includes the undergraduate College; the William B. and Catherine V. Graham School of Continuing Liberal and Professional Studies; four graduate divisions: Biological Sciences, Humanities, Physical Sciences, Social Sciences; and six graduate professional schools: Divinity School, Law School, Pritzker School of Medicine, Irving B. Harris Graduate School of Public Policy Studies, School of Social Service Administration, and the University of Chicago Booth School of Business.

3. Degrees Offered: Authority for recommending the awarding of degrees is vested in the academic units. The University currently awards the following degrees:

Bachelor of Arts	B.A.
Bachelor of Science	B.S.
International Master of Business Administration	IM.B.A.
Master of Arts	M.A.
Master of Arts in Teaching	M.A.T.
Master of Business Administration	M.B.A.
Master of Comparative Law	M.Comp.L.
Master of Divinity	M.Div.
Master of Fine Arts	M.F.A.
Master of Laws	LL.M.
Master of Liberal Arts	ML.A.
Master of Public Policy	M.P.P.
Master of Science	M.S.
Doctor of Comparative Law	D.Comp.L.
Doctor of Jurisprudence	J.S.D.
Doctor of Law	J.D.
Doctor of Medicine	M.D.
Doctor of Philosophy	Ph.D.

Degrees which the University has offered during its history for which programs no longer exist may appear on transcripts of older records.

4. Calendar & Status: The University calendar is on the quarter system. Full-time quarterly registration in the College is for three or four units and in the divisions and schools for three units. For exceptions, see 9. Graduate Residence Status.

5. Course Information: Generally, courses with the first three digits numbered from 100 to 299 are courses designed to meet requirements for baccalaureate degrees. Courses with numbers beginning with 300 and above meet requirements for higher degrees.

6. Credits: The Unit is the measure of credit at the University of Chicago. One full Unit (100) is equivalent to 3 1/3 semester hours or 5 quarter hours. Courses of greater or lesser value (150, 050) carry proportionately more or fewer semester or quarter hours of credit. See 10 for Law School measure of credit.

**7. Grading Systems:
Quality Grades**

Grade	College & Graduate	Business	Law
A+	4.0	4.33	
A	4.0	4.0	186-180
A-	3.7	3.67	
B+	3.3	3.33	
B	3.0	3.0	179-174
B-	2.7	2.67	
C+	2.3	2.33	
C	2.0	2.0	173-168
C-	1.7	1.67	
D+	1.3	1.33	
D	1	1	167-160
F	0	0	159-155

Effective Start Dates of Plus/Minus Grading System

Social Service Administration	Autumn 1977
Public Policy Studies	Autumn 1983
Divinity	Autumn 1983
College (undergraduate)	Summer 1984
Graduate Library School	Spring 1986
Graduate Humanities	Autumn 1986
Graduate Social Sciences	Autumn 1986
Graduate Physical Science	Summer 1988
Business	Autumn 2006

Non-Quality Grades

I	Incomplete: Not yet submitted all evidence for final grade. Where the mark I is changed to a quality grade, the change is reflected by a quality grade following the mark I, (e.g. IA or IB).
IP	Pass (non-Law): Mark of I changed to P (Pass). See 10 for Law IP notation.
NGR	No Grade Reported: No final grade submitted
P	Pass: Sufficient evidence to receive a passing grade. May be the only grade given in some courses.
Q	Query: No final grade submitted (College only)
R	Registered: Registered to audit the course
S	Satisfactory
U	Unsatisfactory
UW	Unofficial Withdrawal
W	Withdrawal: Does not affect GPA calculation
WP	Withdrawal Passing: Does not affect GPA calculation
WF	Withdrawal Failing: Does not affect GPA calculation
	Blank: If no grade is reported after a course, none was available at the time the transcript was prepared.

Examination Grades

H	Honors Quality
P*	High Pass
P	Pass

8. Academic Status and Program of Study: The quarterly entries on students' records include academic statuses and programs of study. The Program of Study in which students are enrolled is listed along with the quarter they commenced enrollment in them at the beginning of the transcript. The definition of academic statuses follows:

Bi-registrants: students registered in the Divinity School of the University of Chicago and in a cooperative Hyde Park Theological School.

Doctoral: students enrolled in D.Comp.L., J.S.D., or Ph.D. degree.

Exchange Scholar: students who are degree candidates at another university, who, by formal arrangement, are registered *pro forma* at The University of Chicago.

Laboratory Schools: students who are registered *pro forma* in the College but who are enrolled as students in the Laboratory Schools of the University as secondary school students.

Master's/Professional: students enrolled in programs leading to a master's or professional degree (J.D., M.Div.).

Returning Scholars: students who are registered through the Graham School of Continuing Liberal and Professional Studies and are not candidates for a degree.

Special Summer: students who are registered in a Summer Quarter in credit courses but not candidates for a degree.

Students-at-large: students who are not candidates for a degree.

Undergraduate: students in a program leading to a baccalaureate degree.

Work taken as a Student-at-large or Special Summer Student normally does not apply toward a degree program at The University of Chicago. However, such courses become available for academic credit if a student is later admitted to an approved degree program at The University of Chicago. Effective Autumn 1989 courses taken by Returning Scholars may not be applied toward a degree nor will quality grades be assigned.

9. Graduate Residence Status: Effective Autumn 1984 the academic records of students in programs leading to the degree of Doctor of Philosophy reflect these residence statuses:

Scholastic Residence: the first two years of graduate study beyond the baccalaureate degree (Revised Summer 2000 to include the first four years of graduate study.)

Research Residence: the third and fourth years of graduate study beyond the baccalaureate degree. (Discontinued Summer 2000)

Advanced Residence: the period of registration following completion of Scholastic and Research Residence until the Doctor of Philosophy is awarded. (Revised in Summer 2000 to be limited to 12 years following admission to doctoral program.)

Active File Status: a student in Advanced Residence status who makes no use of University facilities other than the Library may be placed in an Active File with the University. (Discontinued Summer 2000)

Leave of Absence: the period during which a student suspends work toward a degree and expects to resume work following a maximum of one academic year.

Extended Residence: the period following the conclusion of Advanced Residence. (Discontinued Summer 2013)

Students in Scholastic, Research, or Advanced Residence Status, but not in the Active File or Extended Residence status, are considered full-time students.

The academic records of students who are permitted to complete the scholastic or research residence requirement on a half-time basis will indicate half-time study.

Students in Research or Advanced Residence Status whose doctoral research requires residence away from the University register *pro forma*. *Pro forma* registration does not exempt a student from any other residence requirements but suspends the requirement for the period of the absence.

10. Law School Transcript Key: The credit hour is the measure of credit at the Law School. University courses of 100 Units not taught through the Law School are comparable to 3 credit hours at the Law School, unless otherwise specified.

The frequency of honors in a typical graduating class:

Highest Honors (182+)	0.5%
High Honors (180.5+)/(pre-2002 180+)	7.2%
Honors (179+)/(pre-2002 178+)	22.7%

Pass/Fail and letter grades are awarded primarily for non-law courses. Non-law grades are not calculated into the law GPA.

P** indicates that a student has successfully completed the course but technical difficulties, not attributable to the student, interfered with the grading process.

IP (In Progress) indicates that a grade was not available at the time the transcript was printed.

* next to a course title indicates fulfillment of one of two substantial writing requirements (Discontinued for Spring 2011 graduating class).

See 7 for Law School grading system.

11. FERPA Re-Disclosure Notice: In accordance with U.S.C. 438(9)(4)(8) (The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without consent of the student. Alteration of this transcript may be a criminal offense.

12. Basis of Authenticity: Transcripts of University of Chicago academic records for students registered after Spring Quarter 1979 are presented in two media: Paper or Electronic.

Paper Transcripts: these are computer generated and printed on safety paper. The transcript is official if it bears the signature of the University Registrar in white over the smaller University seal on the front of the transcript.

Further detail on verifying authenticity appears on the face of this document.

Electronic Transcripts: these are digitally signed, sent electronically and display a blue ribbon certificate of authenticity.

Office of the University Registrar
University of Chicago
1427 E. 60th Street
Chicago, IL 60637
773.702.7891

For an online version including updates to this information, visit the Office of the University Registrar website:
<http://registrar.uchicago.edu>

Revised 05/2013

How to Authenticate the Official Transcript from the University of Chicago

Important Note: *This electronic version of the official transcript (digitally signed pdf) of the University of Chicago, as received herein, is official, authentic, and secure. The contents of the transcript are accurate as of the date of issue, so noted, on the document. No additional verification, additional documentation or follow-up hardcopy record (i.e. paper transcript received through U.S. postal or private carriers) is necessary before accepting and using the electronic document in the course of normal activity or business.*

This document has been digitally signed and therefore contains special characteristics. When this document is viewed through Adobe Reader versions 6.0 or higher or through Adobe Acrobat versions 6.04 or higher, it will reveal that a digital signature has been applied to the document. A pop-up screen will indicate whether the document is either valid, invalid, or whether the signer of the document is unknown and other measures must be taken to authenticate the document. In addition, the pop-up screen allows for further examination of the digital signature, allowing you to authenticate the origin of the document.

Document Validity

A **valid** signature means that the document's contents have not been changed or altered in any way. Also, when the pop-up screen displays a message that the digital signature is true and authentic it means that the author of the document is known to the certification authority and the person or institution represented by the digital signature is true and authentic.

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Washington University in St. Louis

SCHOOL OF LAW

May 10, 2022

The Honorable Elizabeth Hanes
 Spottswood W. Robinson III & Robert R. Merhige,
 Jr., U.S. Courthouse
 701 East Broad Street, 5th Floor
 Richmond, VA 23219

RE: Recommendation for Charles Clark

Dear Judge Hanes:

I'm writing to recommend my student, Charles Clark, for a clerkship in your chambers. A sharp critical thinker with a talent for writing, I believe Charles will make an excellent clerk.

I've had Charles in two courses and was grateful for his contributions in both. Last fall, Charles took my American Presidency seminar, one of 18 students, and I had him in Comparative Law this spring, a class of 45.

In my Presidency seminar, students write me weekly reaction papers ahead of our two-hour class discussion. Working in this medium, Charles' intellect and personality came through strongly. Charles' reaction papers engaged fluently with topics ranging from presidential war powers to the power of the "bully pulpit" on public opinion and the effect of political parties on presidential leadership and American constitutional government. During our week engaging with the 2020 *Seila Law v. CFPB* opinion, Charles sketched out links between the Court's embrace of unitary executive theory and current political and demographic trends that I had never thought of. In his final exam, Charles argued that the presidency was intended to be an "office above parties," adducing evidence from the Framers' political philosophies, the design of the Electoral College, and the tripartite structure of the Constitution itself. His writing is fluid, clear, and full of insight.

Charles was a standout in Comparative Law as well, a lecture survey course I teach with as much student participation and dialogue as I can solicit. We were housed in a large, fairly cavernous auditorium this semester, but a handful of students closed the distance by sitting in the front row and chiming in with frequent comments. Charles was one of these regulars. He grasps concepts quickly, moving swiftly from retention to analysis and engagement. He is a remarkably courageous student, always willing to challenge a bit of received wisdom or to work through a tricky problem in real time. Whenever a tough question bobs in the air just a little too long, I can count on Charles to supply a thoughtful answer grounded in the reading. Both as a writer and an oral interlocutor, Charles was one of my finest students this year.

Having joined the faculty in Fall 2020, I am fairly new to WashULaw, but I have been consistently delighted and impressed with WashULaw students. Our Law School is ranked #16 in the nation by US News, which, while generous, actually undervalues our students, who, grade-wise, compete with students from Duke, UCLA, UVA and Penn. (Our incoming class had a median LSAT score of 170 and a median GPA of 3.93.) WashULaw students come from all over the country and from diverse walks of life, boasting impressive professional accomplishments, yet for all their intellectual achievements, they are a remarkably down-to-earth and laid-back bunch.

I put Charles in this category. Having grown up in the UK and then lived all over the country, including New York, Texas, and Illinois, Charles has a flexible, nimble mind. His tight style of writing and rigorous mode of analytical thought seem to flow naturally out of his training in philosophy—a B.A. from the University of Chicago and graduate training at the University of Houston, as well. Charles also serves as Articles Editor for the *Jurisprudence Review*, and recently published a note, "How to Do Things with Words: Speech Act Theory and the Law."

Last but not least, Charles will be a pleasure to have in chambers. He is a thoughtful, humble, and likeable young man, not to mention a high-caliber intellect. In summary, Charles has the qualities that make a superb law clerk. I am confident that you will enjoy working with him as much as I have.

Please feel free to call or e-mail me if I can offer any further information.

Best,

/s/

Andrea Katz
 Associate Professor of Law

Washington University School of Law
 One Brookings Drive, MSC 1120-250-258
 St. Louis, MO 63130
 (314) 935-6420

Andrea Katz - andrea.katz@wustl.edu

CHARLES H. CLARK

40 North Kingshighway Boulevard, Apt 12C, St. Louis, MO 63108
(203) 788-4419 | charles.h.clark@wustl.edu

Writing Sample

As a part of my work with the First Amendment Clinic at Washington University School of Law, I prepared portions of a Memorandum in Support for a client's Motion for Summary Judgement. I am including extracted the portions of the brief I drafted here. The case involved the blocking on Twitter of a journalist by a member of city government. A major issue in the case was whether or not the account could be considered an official governmental account.

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Plaintiff,)	
)	
)	
v.)	Case No.
)	
LEWIS E. REED,)	
ST. LOUIS BOARD OF ALDERMEN,)	
PRESIDENT,)	
)	
Defendant.)	

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT**

...

ARGUMENT

**I. THE INTERACTIVE COMPONENT OF THE ACCOUNT IS A
DESIGNATED PUBLIC FORUM**

...

A. President Reed exercised government control over the Account.

As this Court recognized, “[o]ther courts have . . . found the interactive space of a social media page amenable to public forum analysis.” Memo. & Order, Doc. 21 at 6, Case No. 4:20-cv-821-JAR. In those cases, the government “retain[ed] substantial control over” the social media pages at issue, *Davison v. Randall*, 912 F.3d 666, 683 (4th Cir. 2019) (citing *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 547, 555 (1975)), enabling the government to “devote[] [the property] to public use,” *Cornelius*, 473 U.S. at 801. President Reed retained a similar level

of control over the Account. *See Davison*, 912 F.3d at 683-84 (discussing ways in which a government official exercised control over a social media account). He is responsible for its creation, SUMF ¶ 44, and “operated and oversaw” the account at the time of the block, SUMF ¶ 48. President Reed also controlled the content of the Account’s tweets, which generally reference him and his official activities. SUMF ¶ 44; *See Knight First Amend. Inst. at Columbia Univ. v. Trump*, 302 F. Supp. 3d 541, 567 (S.D.N.Y. 2018) (finding President Trump’s ability to “control the content of the tweets” sent from his account indicative of government control), *aff’d*, 928 F.3d 226 (2d Cir. 2019), *cert. granted, judgment vacated sub nom. Biden v. Knight First Amend. Inst. At Columbia Univ.*, 141 S. Ct. 1220 (2021) (vacated with instructions to dismiss as moot because President Trump had left office) [hereinafter *Knight I*]. He also exercised control over Ms. Felts’ access to the interactive component of the Account by using the block feature, SUMF ¶ 119, the “aspect” of the Account “giving rise” to Ms. Felts’ claim, *Davison*, 912 F.3d at 685.

In operating the Account, President Reed was not acting as a private citizen but in an official capacity. While he was already President, Reed created the Account using the handle “@PresReed,” directly referring to his status as a government official, and the Account remained under that name for most of its operation. SUMF ¶¶ 44, 46-50; *see Campbell v. Reisch*, 986 F.3d 822, 826 (8th Cir. 2021) (holding the status of an account at creation is relevant to whether it is personal or governmental). President Reed used the Account to “further [his] duties as a municipal official.” *Davison*, 912 F.3d at 680. He issued official press releases using the Account. SUMF ¶¶ 96, 97, 100, 103-04, 107-110. He frequently used the Account to inform constituents of the actions of the Board of Aldermen, including his intention to introduce bills to the Board of Aldermen. SUMF ¶¶ 96, 97, 100, 107; *see Knight First Amend. Inst. at Columbia Univ. v. Trump*, 928 F.3d

226, 236 (2d Cir. 2019), *cert. granted, judgment vacated sub nom. Biden v. Knight First Amend. Inst. At Columbia Univ.*, 141 S. Ct. 1220 (2021) [hereinafter *Knight II*] (finding President Trump’s use of his account to announce “matters related to official government business” and “policy decisions and initiatives” demonstrated “non-private nature” of account). He used the Account as a method of informing the public about important health and safety concerns in the city. SUMF ¶¶ 93 (Tweeting “I’m proud to announce the organization of the Coronavirus Special Committee of the #STLBOA.”); *see Davison*, 912 F.3d at 680 (Defendant’s use of social media page to “inform the public about serious public safety events and to keep her constituents abreast of the County’s response to a snowstorm and to coordinate snow removal activities” supported finding that the page was “created and administered . . . to ‘perform[] actual or apparent dut[ies] of h[er] office’”). He also used the Account to solicit the opinions of his constituents and to communicate with the press. SUMF ¶¶ 101-03 (Tweeting “we want to hear from you” and a link to the City website). The Account was used primarily for “official governmental activity.” *Campbell*, 986 F.3d at 826.

Members of President Reed’s staff had access to, assisted in the operation of, and created content to be posted on the Account. *See Knight II*, 928 F.3d at 235 (finding President Trump’s use of White House staff supported conclusion that account was government controlled). President Reed consulted his staff when drafting tweets, and they assisted in checking information before the messages were released. SUMF ¶¶ 62-71. Employees of the Office created graphics for use in his tweets. SUMF ¶ 71. An Office employee requested City employees include President Reed’s Twitter information when creating his official page on the City of St. Louis’ website, and when that website was created a live feed of everything he posted from the Account appeared there. SUMF ¶¶ 72-85. A private citizen could not have operated the Account as President Reed did. *See*

Garnier v. Poway Unified Sch. Dist., No. 17-CV-2215-W (JLB), 2019 WL 4736208, at 7 (S.D. Cal. Sept. 26, 2019) (finding defendants’ “ability to post about district events they attended and share Board information was due to their positions as public officials”). Instead, in operating the Account, President Reed “[held] out and use[d] a social media account open to the public as an official account for conducting official business.” *Knight II*, 928 F.3d at 236. President Reed acts in an official capacity in operating the Account, including when he used it to block Ms. Felts’ access to a public forum. *See id.* (“Because the President, as we have seen, acts in an official capacity when he tweets, we conclude that he acts in the same capacity when he blocks those who disagree with him.”)

...

II. PRESIDENT REED OPERATED THE ACCOUNT UNDER THE COLOR OF STATE LAW

A claim under 42 U.S.C. § 1983 requires that the government official was acting under color of state law. There is no genuine dispute as to any material fact establishing that the President Reed operated his account and blocked Felts from its interactive component under color of law.

An official “acts under color of state law while acting in his official capacity or while exercising his responsibilities pursuant to state law.” *West v. Atkins*, 487 U.S. 42, 50 (1988). As this Court has stated, “[a]n action is taken under color of law if it is fairly attributable to a government entity.” Memo. & Order, Doc. 21 at 11 (citing *Meier v. St. Louis*, 934 F.3d 824, 829 (8th Cir. 2019)). Municipal liability may be grounded on the single act of a policymaker. *See City of St. Louis v. Praprotnik*, 485 U.S. 112, 123 (1988) (“an unconstitutional governmental policy could be inferred from a single decision taken by the highest officials responsible for setting policy

in that area of the government's business"). There is no requirement that the state actor operate strictly within the bounds of the defined duties ascribed to his office by law. *Johnson v. Phillips*, 664 F.3d 232, 240 (8th Cir. 2011). Instead "[t]he element is satisfied if the defendant acts or purports to act in the performance of official duties." *Id.* When administering a social media account, a government official is acting under color of law when "the page is clothed in the "power and prestige of [his] state office" and administered "to perform actual or apparent duties of her office.'" Memo. & Order, Doc 21 at 11 (Citing *Davison*, 912 F.3d at 680-81).

Determining what is "fairly attributable" to the state is a fact-based analysis, but courts look to the "nature and circumstances of the [official's] conduct and the relationship of that conduct to the performance of his official duties.'" *Lee ex rel. Lee v. Borders*, 764 F.3d 966, 971 (8th Cir. 2014) (quoting *Roe v. Humke*, 128 F.3d 1213, 1216 (8th Cir. 1997)). As the Supreme Court has said, "what is fairly attributable is a matter of normative judgment, and the criteria lack rigid simplicity." *Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295–96 (2001).

President Reed's use of the Account demonstrates his actions are fairly attributable to the government. Reed created the Account to represent him online in his capacity as the President of the Board of Aldermen, not as a private citizen. *Supra* Part I.A; SUMF ¶¶ 44-47. He was already President when he created the Account and continued to operate it as an online extension of his role as President of the Board of Aldermen. SUMF ¶¶ 46; *cf. Campbell*, 986 F.3d at 826.

President Reed consistently used the Account "to perform actual or apparent duties of [his] office." *Davison*, 912 F.3d at 680. Much of what was done on the Account was "official governmental activity." *Campbell*, 986 F.3d at 826. Reed issued press releases, communicated with other government officials, solicited information from the public and informed his constituents of

important matters. *Supra*, Part I.A; SUMF ¶¶ 92-110; *cf. Knight II*, 928 F.3d at 236 (finding state action where President Trump used account to announce “matters related to official government business” and “policy decisions and initiatives”); *Davison*, 912 F.3d at 680 (finding state action where defendant used page to “inform the public about serious public safety events and to keep her constituents abreast of the County’s response to a snowstorm and to coordinate snow removal activities”). He “consistently used the Account as an important tool of governance and executive outreach.” *Knight II*, 928 F.3d at 226.

The Account was also “‘clothed . . . in the ‘power and prestige of [his] state office.’” *Davison*, 912 F.3d at 681 (quoting *Harris v. Harvey*, 605 F.2d 330, 337 (1979)). The description and handle of the Account referred to him in his official position as President of the Board of Aldermen. SUMF ¶¶ 44-49. At the time of filing this suit, the Office of the President of the Board of Aldermen website, maintained by the City of St. Louis, included a link to the Account as one of the available methods of communicating with President Reed and an embedded live feed of the Account so that every message President Reed communicated using Twitter would simultaneously appear there. SUMF ¶¶ 84-88. Similarly, prior to the filing of this suit, the Account also linked back to that official page. SUMF ¶ 91. President Reed also used his official staff to assist his operation of the Account. SUMF ¶¶ 62-83; *supra* Part I.A; *cf. Knight II*, 928 F.3d at 235. A member of the public who encountered either the Account or Reed’s page on the official city website would be justified in assuming that the Account was an official mouthpiece of the Office of the President of the Board of Aldermen.

President Reed’s Twitter contained all the trappings of an official account. He frequently used the Account to perform the duties he had as the President of the Board of Aldermen. *Supra* Part I.A; SUMF ¶¶ 92-110. This was not a personal account created by a private citizen who happened to

become a public official. Instead, the Account appears to be and was operated as a “organ of official business.” *Campbell*, 986 F.3d at 826. As such, the actions that the Account takes are “fairly attributable” to the state. *See Knight II*, 928 F.3d at 236; *Davison*, 912 F.3d at 681. While Reed was entitled as an elected official to create a personal account and block any individuals he desired, when he created and operated a Twitter account that appeared and acted as a constituent part of his office as President, he was acting under color of state law. *See Knight II*, 953 F.3d at 219–20. When President Reed blocked Ms. Felts under color of law, he unconstitutionally violated her First Amendment rights to express herself in a designated public forum.

...

Applicant Details

First Name **Olivia**
 Middle Initial **L.**
 Last Name **Clark**
 Citizenship Status **U. S. Citizen**
 Email Address olclark@umaryland.edu

Address
Address
Street
905 N Calvert St
City
Baltimore
State/Territory
Maryland
Zip
21202
Country
United States

Contact Phone Number
9497517429

Applicant Education

BA/BS From **Boston University**
 Date of BA/BS **May 2018**
 JD/LLB From **University of Maryland Francis King Carey School of Law**
http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=52102&yr=2011
 Date of JD/LLB **May 20, 2022**
 Class Rank **15%**
 Law Review/Journal **Yes**
 Journal(s) **Journal of Health Care Law and Policy**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Cina, Margherita
margherita.cina@georgetown.edu
Ram, Natalie
nram@law.umaryland.edu
410 706 7214
Hoke, Kathleen
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References

Natalie Ram
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Kathleen Hoke
Phone: (410) 706-1294 Email: khoke@law.umaryland.edu
Margherita Cina
Phone: (312) 927-6650 Email: mmc313@georgetown.edu
This applicant has certified that all data entered in this profile and any application documents are true and correct.

OLIVIA LEIGH CLARK

905 N. Calvert Street, Baltimore MD 21201 • (949)751-7429 • olclark@umaryland.edu

Dear Judge Hanes:

My name is Olivia Clark. I am a second-year day student at University of Maryland Francis King Carey School of Law. I am writing to express my interest in a clerkship for the 2022-23 Term.

My educational and work experiences demonstrate that I am an efficient and reliable worker. During law school, I have become a strong legal researcher and writer, and also improved my organizational and time management skills. As a research assistant for Professor Natalie Ram, I performed a fifty-state legislative survey, researching bioethics issues that had little to no explicit legislation. To accomplish our goal, I learned to analyze and interpret small nuances in language and apply differing canons of interpretation to formulate conclusions from the research. My internship at the O'Neill Institute of Global and National Health Law at Georgetown pushed my legal research skills with international law projects and my writing skills with drafting portions of multiple legal papers and a book chapter on a diverse range of legal issues, greatly improving my persuasive writing. My work for the *Journal of Health Care Law and Policy* sharpened my ability to look deeply at the history and evolution of specific areas of law and how courts interpreted them differently. Finally, I am interning for Judge McDonald on the Maryland Court of Appeals this spring to sharpen my effective drafting of bench memoranda. Based on my legal research and writing experience, I believe that I will make an effective judicial clerk.

Prior to law school, I earned a Masters in Public Health and a Bachelor of Science in Health Sciences from Boston University. While in Boston, I worked as a biostatistician at the Veteran's Association Research Institute where I was the lead data analyst for a project. My work with confidential data required great organizational skills and attention to detail. As the sole data manager and analyst on the team, my ability to work with precision, manage time, and meet deadlines was integral to the success of the study. These experiences set me apart from other law students and contribute to my success in the legal field.

Through my diligence and dedication, I have acquired the skills necessary to be a valuable judicial clerk. I am applying for a clerkship because I want to become a positive force in the field of law. I hope you will give me the opportunity to prove my value.

Thank you for your time and consideration.

Sincerely,

Olivia L. Clark

OLIVIA LEIGH CLARK

905 N. Calvert Street, Baltimore MD 21201 • <https://www.linkedin.com/in/olivialclark/> • (949)751-7429 • olclark@umaryland.edu

EDUCATION

University of Maryland Francis King Carey School of Law, Baltimore, MD

Juris Doctor Candidate, May 2022

GPA: 3.68

- Concentration: Health Law
- Journal: Executive Notes and Comments, *Journal of Health Care Law and Policy* (May 2021- Present)
- Activities: Student Health Law Organization, President (August 2020 – May 2021)
- Awards: CALI Awards for Business Aspects of Health Care (Fall 2020); Public Health and the Law (Fall 2020)

Boston University, Boston, MA

Master of Public Health, May 2019

GPA: 3.75

- Certificate: Epidemiology & Biostatistics; Context: Human Rights, Social Justice, & Health Equity

Boston University, Boston, MA

Bachelor of Science in Health Sciences, magna cum laude, May 2018

GPA: 3.74

- College of Health & Rehabilitation Sciences: Sargent College
- Six-time Dean's List award honoree

PROFESSIONAL EXPERIENCE

U.S. Department of Health and Human Services, Office of General Counsel – CMS Division, Washington DC

Honors Intern, May 2021 – August 2021

- Assist Division attorneys in all aspects of their work, including research, writing, and client meetings.

United Urology Group, Owings Mills, MD

Law Clerk, February 2021 - Present

- Draft contracts, research compliance laws, and create compliance repository.

Maryland Court of Appeals, Annapolis, MD

Legal Intern for Judge McDonald, January 2021 – May 2021

- Conducted legal research and draft bench memoranda for upcoming cases.

University of Maryland Francis King Carey School of Law, Baltimore, MD

Research Assistant to Professor Natalie Ram, June 2020 - Present

- Conduct research on the legal and bioethical issues of newborn blood spot data usage.

O'Neill Institute for National and Global Health Law, Georgetown University Law Center, Washington, DC

Legal Intern, June 2020 – August 2020

- Researched national and global health law issues and worked on the creation of a global HIV policy database.
- Aided in drafting multiple academic papers as well as a book chapter.

Veterans Association Research Institute, Boston MA

Research Statistician, September 2018 - May 2019

- Developed data dictionaries, used SAS to standardize and analyze data, and translated psychological testing measures to online Qualtrics surveys, increasing data collection and statistical testing efficiency and accuracy.

People for the American Way, Washington DC

Political Intern, June 2018 – August 2018

- Researched, organized, and advocated for endorsement of local, state, and national candidates to board members.

World Health Organization, Geneva, Switzerland

Intern, October 2017 – December 2017

- Created global advocacy and informational materials and facilitated the World Hearing Day 2018 campaign.

@00276097 Olivia L. Clark
Jun 03, 2021 12:29 pm

Display Transcript



This is NOT an official transcript. Courses which are in progress may also be included on this transcript.

Note: In your SURFS record, you may see an I or an E in the Repeat column to the far right of the record. These notations are used in our database to denote Include or Exclude courses in your GPA calculation. Because SURFS is a direct reflection of the live database, we can not remove these notations from SURFS.

Please be aware that I in the SURFS Repeat column will not be printed on your transcript. I is used as a grade that will appear only to denote an Incomplete for a course. Similarly, E will not appear on your transcript either. Courses that are being excluded from your GPA will be marked with an R in the Repeat column on your transcript.

[Institution Credit](#) [Transcript Totals](#) [Courses in Progress](#)

Transcript Data

STUDENT INFORMATION

Name : Olivia L. Clark

Curriculum Information

Current Program

Juris Doctor

Program: Law Day

Major and Department: Law, Law

Major Concentration: Law Cardin Required

This is NOT an Official Transcript

DEGREES AWARDED

In Progress: Juris Doctor **Degree Date:**

Curriculum Information

Primary Degree

Major: Law

Major Concentration: Law Cardin Required

INSTITUTION CREDIT [-Top-](#)

Term: Fall 2019

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	506A	LW	CRIMINAL LAW	B+	3.000	9.99		
LAW	527A	LW	CIVIL PROCEDURE	B+	4.000	13.32		
LAW	531A	LW	LEGAL ANALYSIS AND WRITING	A-	3.000	11.01		
LAW	535A	LW	TORTS	A-	4.000	14.68		
LAW	554A	LW	INTRO TO CONTRACTS	A-	2.000	7.34		

Term Totals (School of Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	16.000	16.000	16.000	16.000	56.34	3.52
Cumulative:	16.000	16.000	16.000	16.000	56.34	3.52

Unofficial Transcript

Term: Spring 2020

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	501B	LW	ADMINISTRATIVE LAW	P	3.000	0.00		
LAW	528A	LW	CON LAW I: GOVERNANCE	P	3.000	0.00		
LAW	534A	LW	PROPERTY	P	4.000	0.00		
LAW	550A	LW	INTRODUCTION TO LEGAL RESEARCH	B-	1.000	2.67		
LAW	551E	LW	WRITTEN AND ORAL ADVOCACY	P	2.000	0.00		
LAW	558A	LW	CONTRACTS II	P	3.000	0.00		

Term Totals (School of Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	16.000	16.000	16.000	1.000	2.67	2.67
Cumulative:	32.000	32.000	32.000	17.000	59.01	3.47

Unofficial Transcript

Term: Fall 2020

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	506T	LW	BUS ASP OF HEALTH CARE LAW SEM	A+	3.000	12.99		
LAW	507C	LW	JOURNAL HEALTH CARE LAW & POL	CR	1.000	0.00		I
LAW	529A	LW	CON LAW II: INDIVIDUAL RIGHTS	A-	3.000	11.01		
LAW	558D	LW	LEGAL PROFESSION	A-	2.000	7.34		
LAW	591Q	LW	CLIMATE CHANGE: EMERGING ISSUES	A	2.000	8.00		
LAW	593C	LW	PUBLIC HEALTH AND THE LAW	A	3.000	12.00		

Term Totals (School of Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	14.000	14.000	14.000	13.000	51.34	3.95
Cumulative:	46.000	46.000	46.000	30.000	110.35	3.68

Unofficial Transcript

Term: Spring 2021

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	503L	LW	HEALTH CARE LAW & POLICY	B+	3.000	9.99		
LAW	507C	LW	JOURNAL HEALTH CARE LAW & POL	CR	1.000	0.00		I
LAW	516B	LW	ASPER JUDICIAL EXTERNSHIP	CR	4.000	0.00		
LAW	536D	LW	ADVANCED TORTS	A-	3.000	11.01		
LAW	544S	LW	ASPER JUDICIAL EXT WORKSHOP	CR	1.000	0.00		
LAW	588S	LW	CONFLICT RESOLUTION & THE LAW	A	2.000	8.00		

LAW 596Q LW ALR: EMERGENCY & CRISIS A 1.000 4.00
MGMT

Term Totals (School of Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	9.000	33.00	3.67
Cumulative:	61.000	61.000	61.000	39.000	143.35	3.68

Unofficial Transcript

TRANSCRIPT TOTALS (SCHOOL OF LAW) -Top-

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	61.000	61.000	61.000	39.000	143.35	3.68
Total Transfer:	0.000	0.000	0.000	0.000	0.00	0.00
Overall:	61.000	61.000	61.000	39.000	143.35	3.68

Unofficial Transcript

COURSES IN PROGRESS -Top-

Term: Fall 2021

Subject	Course	Level	Title	Credit Hours	Start and End Dates
LAW	507C	LW	JOURNAL HEALTH CARE LAW & POL	2.000	
LAW	513F	LW	ANTITRUST LAW	3.000	
LAW	553B	LW	EMPLOYMENT DISCRIMINATION LAW	3.000	
LAW	572C	LW	BUSINESS ASSOCIATIONS	3.000	

Unofficial Transcript

[Web Accessibility](#)
RELEASE: 8.7.1



GEORGETOWN LAW

March 16, 2021

Re: Letter of Recommendation for Olivia L. Clark

To whom this may concern:

Please accept my endorsement of Olivia L. Clark, an applicant for a judicial clerkship position. I am positive that Olivia will be a great addition to the clerkship program and I am happy to write this letter of recommendation for her.

I came to know Olivia last summer when she interned for me at the O'Neill Institute for National and Global Health Law. Over the course of the summer, I was impressed with Olivia's research and writing skills, as well as her eagerness and willingness to learn and provide assistance whenever necessary.

Throughout her time working with me, Olivia worked on a number of various research projects, assisting with legal research, public health research, as well as drafting and editing. On the project we were starting examining the legal aspects of the intersection between COVID-19 and noncommunicable diseases (NCDs), her previous studies and expertise in public health and epidemiology were particularly helpful. Furthermore, because this project was still in its genesis, Olivia was quick to respond to changes in the project and would pivot her research to assist me when we chose to go in a different direction.

Olivia was always eager to help, always showing a willingness to jump on various projects and meet tight deadlines. In addition to her work on the COVID-19 and NCDs work, Olivia provided critical research for a book chapter we were writing that had a very tight turnaround. She wrote a useful memo on the African Human Rights System, providing important information as to the structure of this regional human rights systems as well as specific research on how the right to health as interpreted by the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights. Given the tight deadline for the drafting of this chapter, I was appreciative of Olivia's quick responses to my follow-up questions.

Lastly, it is important to note that Olivia was also working with another team at the O'Neill Institute. She was able to not only manage her time well between her various commitments, but she was also very good at communicating her availability and workload.

I believe that Olivia will bring these skills and enthusiasm along with her to clerkship program. Please feel free to contact me at +1 (312) 927-6650 or at mmc313@georgetown.edu should you have any questions regarding Olivia Clark's recommendation.

Sincerely,

A handwritten signature in black ink, appearing to read "Margherita M. Cinà".

Margherita M. Cinà
Associate, Center for Legal Innovation on Food Environments
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UNIVERSITY of MARYLAND
FRANCIS KING CAREY
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Natalie Ram
Professor of Law
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April 1, 2021

Re: Recommendation for Olivia Clark

Dear Judge:

I write to enthusiastically recommend Olivia (“Livie”) Clark for a clerkship in your chambers. I have been fortunate to know Livie well in her time at the University of Maryland. Livie was a student in my Spring 2020 Property class. Since the conclusion of that course, she has worked with me as a research assistant. In both roles, Livie has shined. She is accomplished, smart, diligent, and resourceful. She has my highest recommendation.

I first met Livie as a student in my Property course in Spring 2020. Due to the Covid-19 pandemic, Livie received a grade of “Pass” in my Property course. But that formless Pass obscures the bright, hardworking, and clever student I know Livie to be. Property is a challenging first year course. It demands a mastery of numerous terms of art, arcane rules, and diverging minority and majority policies across the country. Livie applied herself to these challenges with gusto. She handled cold call questioning in class with confidence, demonstrating her preparation and command of the subject matter. I often had the class work in small groups to discuss practice problems. Livie was an active participant in these break out discussions, working collaboratively with her group to navigate difficult questions and theoretical problems.

Livie’s efforts also met with success. On her midterm exam, Livie earned the top score in the class. With respect to the final exam and Livie’s final grade in the course, the School of Law adopted Pass/Fail grading for the Spring 2020 semester. Consistent with that decision, I cannot report to you what grade Livie would have received had the final exam been regularly graded. Nonetheless, I can confidently report that Livie demonstrated mastery of the course material. Livie’s exam essays correctly identified and analyzed the core issues. In one essay, requiring students to demonstrate mastery of the doctrine of marketable title, Livie not only analyzed the legal merits of various arguments available to the parties, but also grappled with the public policies animating those arguments and their resolution. I was delighted to see Livie engage with the question and the relevant doctrine in this deeper way. In sum, Livie’s work more than merited the “Pass” her transcript reflects.

Based on her performance in my course and her background and interest in health law, I hired Livie to be my research assistant. In that role, Livie took the lead on a national survey of state policies regulating law enforcement access to

residual newborn blood spots. Every state operates a critical public health program that collects and screens a blood sample from each child born in the state. State laboratories analyze these blood samples for a wide range of metabolic, genetic, and other disorders. Where a disorder is detected, early intervention can have a critical impact on pediatric development, life expectancy, or quality of life. Even after this public health screening is complete, however, some portion of the blood sample remains. States typically store these residual newborn blood spots for quality assurance, research, or other purposes.

I tasked Livie and another research assistant with excavating whether, how, and under what circumstances state laws and regulations permit the police to access these blood samples for investigative purposes. This was a challenging project. For one thing, it was a big task, requiring research and analysis of statutory, regulatory, and other sources in fifty-one jurisdictions (all fifty states, plus the District of Columbia). For another, state statutory and regulatory regimes vary widely about where in the state code the newborn screening program is codified, how much detail is set out in the various sources of law, and whether general genetic privacy or other statutes may affect law enforcement access to this rich genetic resource. Most frustratingly, many states implied an answer to my research question, without explicitly addressing it.

Livie's work on this project exceeded my expectations. On multiple occasions, she successfully pinned down a state's policy in greater detail and with more nuance than I had anticipated. For instance, Maine regulates the use of residual newborn blood spots in a section on "residual filter paper specimen storage," using almost none of the key words that typically describe the blood samples at issue. Yet, Livie tracked this regulation down, giving me confidence that we knew what Maine's policy entailed. Similarly, when she researched the law of New Mexico, Livie did not stop when she found a regulatory source stating that residual newborn blood spots may not be used without consent "for any purpose unrelated to newborn screening." Instead, she continued researching, eventually finding that state records associated with newborn screening are, in fact, subject to subpoena. Livie's diligence and resourcefulness are tremendous assets.

Livie has also shouldered more work with ease when circumstances required. When another research assistant working on this project encountered difficulties completing the research tasks assigned, Livie happily and quickly stepped up to take on the additional research burden. Livie ensured that this research project was completed well and in timely fashion. I have been so proud and grateful to have her as a research assistant. I am confident that Livie's grit, tenacity, and ability to work productively in a team would serve her well in your chambers.

Finally, I have been privileged to learn from Livie, who brings an enduring and well-grounded commitment to public health and health law issues to her work.

Before beginning her legal studies, Livie earned a Masters in Public Health at Boston University. At Maryland, Livie has continued to develop her expertise. She has excelled in several health law-related courses, earned a leadership role as President of the Student Health Law Organization, and interned at the O'Neill Institute of Global and National Health Law at the Georgetown University Law Center. With public health law issues increasingly a part of the work of the federal courts, Livie's depth of knowledge in this area would make her an especially valuable clerk to have in chambers .

It has been such a pleasure getting to know and work with Livie. Her promise as a judicial law clerk and as a lawyer are clear. During my own experiences clerking, first for Judge Calabresi of the Second Circuit and later for Justice Breyer at the Supreme Court, I came to appreciate that clerking requires more than just intellectual strength; it also demands a strong work ethic, responsibility, and excellent communication skills. Livie has demonstrated each of these skills in spades. I am pleased to recommend her for a clerkship in your chambers.

If you would like further information or have any questions, please do not hesitate to contact me. You can reach me by phone (410-706-5241) or email (nram@law.umaryland.edu).

Sincerely,



Natalie Ram



Kathleen Hoke

Law School Professor
Center Director
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March 3, 2021

RE: Recommendation for Olivia Clark (Livie)

To Whom It May Concern:

I am writing an enthusiastic letter of support for Olivia Clark (Livie) with respect to her application for a clerkship in your chambers. Livie is a bright, earnest, hard-working student who is genuinely interested in learning not just what the law is but how it came to be the law. She is thoughtful about the application of law to varying scenarios and about whether, when, and how law could and should be changed. Her dynamic professionalism will no doubt be a benefit to you, your staff, and litigants and I know she will gain a lot from the experience.

Livie was a student in my Fall 2020 Public Health and the Law course at the start of her second year. This seminar course is a survey of public health law issues, starting with understanding the legal framework within which public health law and policy develops and is established and enforced, and moving through an array of topics within the public health space. As you might imagine, this Fall offered us many opportunities to address cutting edge issues in public health in the shadow of the pandemic and Livie was more than up to the challenge of addressing these issues for which there are no clear answers. For the class discussion to work, the students had to read the assigned materials (a selection of contemporary materials, not a textbook) and consider the issues within the legal and policy framework. For each subject, we addressed how the pandemic and racial inequities played a role on community health. I was so fortunate to have Livie in class; she was an engaged and engaging student, participating in ways that demonstrated her preparation for class and her consideration of the issues. I do not simply mean Livie did the reading—she did the thinking; thoughtfully considering what she learned in her undergraduate and master programs in public health, her first year of law school, and our earlier class discussions. Thus, her contributions were excellent and raised as many dynamics and questions as they addressed. That is a gift for any professor and class. Yet despite her strong foundation in the subject, Livie did not dominate the discussion; rather, she played a critical role in keeping it moving and interesting, earning not only my respect but that of her peers.

In addition to her effective engagement with classroom material, Livie wrote an excellent paper for the semester, *SNAP and the Substantive Due Process Argument for the Right to Nutrition: District of Columbia v. USDA*, for which she earned a solid A (94; the highest grade in the class). The top grade was due to Livie's intense determination to do an excellent job on the paper. We met several times during the semester to plan the paper—topic selection, thesis, research plan, outline, first draft, and more. At each step, Livie came to meetings prepared, engaged in a true back-and-forth discussion with me, and reflected that discussion at the next step. Her research plan was comprehensive, and she was able to perform traditional legal research and research into social science literature; her skills here were superior, which is unexpected in a 2L student. She prepared an outline that allowed us to work through the paper step-by-step. As a result, her first draft was in really good form. Because she is a very good writer, we were able to work on the structure of the paper and dig deeper into her analysis, identifying and repairing any glitches in her proposal for a law change to address the problem. Livie's final paper was excellent and revealed not only her strong research and writing skills but also her ability to conduct difficult analysis. This process revealed that she can take a significant amount of material and tease out what is most important and use that to advance her analysis—and that Livie came to me with solid writing skills that she enhanced through the process, working on writing more directly and concisely.

Knowing that she is a hard worker with excellent research and writing skills, I was not surprised to learn that Livie was selected Executive Notes and Comments Editor of our Journal for Health Care Law and Policy for next year. I serve as faculty advisor to the journal and have spent quite a bit of time working with the current Editor-in-Chief. I am aware that Livie played a significant role in completing the work of the prior Journal team that left an issue unfinished and digging in deep to get out the two issues for the current team. Rewarded for this commitment and excellent work, Livie was selected to the Executive Board and I am grateful that I will get to work with such a professional, thoughtful, and earnest student to get out the next two issues. Next year Livie will learn critical time management skills, supervise some of her 3L peers and 2L staff, communicate with authors, and engage in team-based decision making. I am confident she will perform at the highest level and that the experience will bring her to your chambers with additional skills and knowledge.

Many moons ago I clerked for The Honorable Lawrence Rodowsky on the Maryland Court of Appeals and now know well many appellate judges. I have assisted our students in securing Asper placements and clerkships and have engaged with our faculty committee on clerkships. I take seriously our obligation to ready our students for practice, including clerkships, and in providing honest insight into a student for a particular placement. I believe I know what is expected in most chambers, particularly the importance of the self-starter nature of a law clerk. Livie has what it takes not just to succeed but to make the chambers an engaging place on an intellectual and personal level. Your chambers will benefit from her work and her engagement.

Livie will bring her intellect, professionalism, strong research and writing skills, and a pleasant personality to the chambers. I highly recommend her. Please contact me if you have any questions. Because I am working from home, please send an email to khoke@law.umaryland.edu or call my cell at 443.386.1804.

Very truly yours,

A handwritten signature in blue ink, reading "Kathleen Hoke". The signature is written in a cursive, flowing style. The first name "Kathleen" is written in a single continuous stroke, and the last name "Hoke" is also written in a single continuous stroke. The signature is centered below the text "Very truly yours,".

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

MICHAEL SCOTT,)	Civil Action No. 19-2134
)	
Plaintiff,)	
)	
v.)	
)	
DWIGHT SCHRUTE,)	
)	
Defendant.)	

**PLAINTIFF MICHAEL SCOTT’S MEMORANDUM IN OPPOSITION TO
DEFENDANT DWIGHT SCHRUTE’S MOTION FOR SUMMARY JUDGMENT**

Plaintiff Michael Scott, by and through undersigned counsel, files this Memorandum in Opposition to Defendant Dwight Schrute’s Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56(a). In support of his Memorandum, Plaintiff states the following:

INTRODUCTION

Plaintiff Michael Scott alleges that when Defendant Dwight Schrute seized Mr. Scott at M&T Bank Stadium on October 1, 2019, Officer Schrute was acting under the color of law and used excessive force violating Mr. Scott’s Fourth Amendment rights under 42 U.S.C §1983 (2012) Civil Rights Act. The parties do not dispute Officer Schrute’s actions constitute a seizure of Mr. Scott. This Memorandum is filed in opposition to Officer Schrute’s motion for summary judgment as a matter of law.

STATEMENT OF FACTS

On October 1, 2019, Mr. Scott attended M&T Bank Stadium to watch the Steelers play the Ravens. Scott Dep. Tr. at 3. Mr. Scott, an excited Steelers fan, cheered with his Terrible Towel as Steelers’ fans do. *Id.* Behind him sat Officer Schrute, his son Jimmy, and his brother-in-law Andy Bernard. Mr. Scott recognized Officer Schrute’s official status, as he wore his

uniform underneath a Ravens Jersey. *Id.* Officer Schrute also had a bag which contained his duty belt, including his issued nightstick, mace, flashlight, and handcuffs. Schrute Dep. Tr. at 3.

Throughout the first half of the game, Officer Schrute and Mr. Bernard grew increasingly frustrated with Mr. Scott for repeatedly standing and cheering. Scott Dep. Tr. at 4. Mr. Bernard and Officer Schrute yelled at Mr. Scott to sit down, to which Mr. Scott complied. *Id.* At halftime, the Baltimore Police were honored on the field so, before going down, Officer Schrute removed his jersey and put on his duty belt. Schrute Dep. Tr. at 4-5. Upon his return, Officer Schrute put the jersey back on and put away his duty belt, except the handcuffs which he allowed Jimmy to play with. *Id.* at 5.

Responding to Mr. Scott's cheers, Mr. Bernard threatened that his "brother-in-law, the cop, [would] make [Mr. Scott] sit down." Scott Dep. Tr. at 4. Officer Schrute then remarked that he was "just trying to enjoy the game," but that Mr. Scott should leave Mr. Bernard alone and sit down. *Id.* Mr. Bernard then hit Mr. Scott on the head with his foam hand, attracting the attention of the park attendant. Officer Schrute advised her that the situation was under control, as it "was nothing compared to the situations [he] usually [had] to control." Schrute Dep. Tr. at 6. She left, remarking it would be "a shame to kick out one of Baltimore's finest." Scott Dep. Tr. at 5.

As overtime began, Mr. Bernard again hit Mr. Scott with his foam hand, angry because some of Mr. Scott's streamers fell into his beer. *Id.* Mr. Scott initially responded, "in good fun," but noticing Mr. Bernard's growing anger, Mr. Scott reached in his pocket for his pepper spray. Seeing this, Mr. Bernard yelled, "I think he has a knife!" *Id.* Officer Schrute responded by tripping Mr. Scott with the chain of his handcuffs, causing Mr. Scott to fall over the railing of the balcony, onto the seats below. *Id.* at 6. After paramedics arrived at Mr. Scott's aid, the park

attendant ordered Officer Schrute and his family to leave the stadium. Schrute Dep. Tr. at 8.

Officer Schrute was subsequently demoted from his rank as a Sergeant. Schrute Dep. Tr. at 2.

Mr. Scott fractured both legs and incurred a concussion and a severe cranial gash, requiring eleven stitches. Med. Rep. at 1. Four months later, Mr. Scott still cannot engage in physical activities, drive, or return to work managing a computer repair shop. Scott Dep. Tr. at 2.

ARGUMENT

I. LEGAL STANDARD FOR SUMMARY JUDGMENT

The court shall grant summary judgment if the movant shows that there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. Pro. 56(c). If a reasonable jury could find for the non-moving party, a genuine issue of material fact exists. When presenting facts for summary judgment, they are viewed in the light most favorable to the non-moving party.

II. THE COURT SHOULD DENY THE MOTION FOR SUMMARY JUDGMENT

Mr. Scott alleges a claim under 42 U.S.C. §1983 Civil Rights Act for his injuries resulting from Officer Schrute's actions. To succeed on a §1983 claim, an individual who, under the color of law, subjects "any citizen of the United States . . . to the deprivation of any rights . . . shall be liable to the party injured in an action at law." 42 U.S.C §1983 (2012). Based on the facts of the case, it is possible that a reasonable jury could find Officer Schrute acted under the color of law and used excessive force in seizing Mr. Scott. Therefore, summary judgment is not appropriate for the §1983 claim.

A. Officer Schrute acted under color of law

Officer Schrute acted under the color of law in his seizure of Mr. Scott since his actions arose out of a sufficiently close nexus to his state duty. When it is unclear if an individual has

acted under the color of law, the Fourth Circuit must consider the totality of the circumstances. *Martinez v. Colon*, 54 F.3d 980, 987 (1st Cir. 1995). If a defendant's "purportedly private actions are linked to events which arose out of his official status, the nexus between the two can play a role in establishing that he acted under the color of state law." *Rossignol v. Voorhaar*, 316 F.3d 516, 524 (4th Cir. 2003). Further, "whether or not a police officer is off-duty does not resolve the question of whether he or she acted under the color of law." *Stengel v. Belcher*, 522 F.2d 438, 441 (6th Cir. 1975). Relevant factors courts have weighed include if the actions were motivated by state status, appearance, carrying of issued weapons, and authority of the position. *Givens v. O'Quinn*, 121 F.App'x 984 (4th Cir. 2005) (per curium). Officer Schrute's indicia of authority combined with the nature of his actions indicate he acted under the color of law.

1. Officer Schrute's outward indicia of authority indicates he acted under the color of law

Courts have found officers act under the color of law when they exhibit visible assertions of official authority in the course of their actions. *Givens*, 121 F.App'x at 988. Courts determine officers acted under the color of law when their official status allowed them to carry out actions in a "manner that private citizens never could have." *Rossignol*, 316 F.3d at 526. However, the "mere facilitation of an assault by possession of a state-issued firearm [is] not itself enough to create state action." *Givens*, 121 F.App'x at 992. If an individual lacks state authority, but purports to act under that authority, the fact that the act could have been purely personal is non-dispositive. *Barna v. City of Perth Amboy*, 42 F.3d 809, 816 (3rd Cir. 1994). Assertions of such authority "include flashing a badge, identifying oneself as a police officer, placing an individual under arrest, or intervening in dispute imposed by police department regulations." *Id.* Thus, for a court to find an officer acted under the color of law, the officer's outward indicia of official authority must facilitate the actions taken, even in quasi-personal settings.

The court looks to visible manifestations of official status when deciding if an individual acted under the color of state law. In *Rossignol*, off-duty officers bought all of the newspapers running a story that portrayed the officers in a negative light. 316 F.3d at 516. The officers' only outward manifestations of their position were their visible service weapons and one of them wore a sweatshirt with "Sheriff" written on it. *Id.* at 520. The court noted that the shopkeepers' recognition of the officers' official status intimidated them into compliance. The court found that, despite being off-duty, the officers acted under the color of law because their visible indicia of authority facilitated their actions. Similarly, in *Layne v. Sampley*, though the officer was off-duty and in plain clothes at the time of the altercation, the individual knew he was an officer from previous interactions. Further, just before the interaction in question, the individual witnessed the officer talking with other officers and passing a gun around. *Layne*, 627 F.2d 12 (4th Cir. 1980). These visible indications of authority convinced the court to find the officer had acted under color of law when he shot the individual. *Id.* In *Barna*, 42 F.3d at 818, however, the court held that an officer's roll in a family dispute was purely personal when the use of his official nightstick was his sole outward indicia of authority.

Officer Schrute's indicia of official status and authority through his visible uniform and duty belt establishes he acted under the color of law. Officer Schrute wore his police uniform and had his duty belt with him at the game. Mr. Scott knew of Officer Schrute's official status through his clothing. When the park attendant addressed the men, Officer Schrute assured her that intervention was unnecessary since the situation was under control. Had the attendant not recognized Officer Schrute's status through his uniform, she likely would have removed him from the stadium. Officer Schrute also had his issued handcuffs, even allowing his son to play with them, making them easily visible to those around. Though the use of issued materials does

not prove action under the color of law, it is a relevant factor, as a private citizen would not have had access to handcuffs at a football game. As in *Rossignol*, Officer Schrute's indicia of authority allowed him to act in a way a private citizen could not have in his interaction with Mr. Scott. Thus, the court should find that Officer Schrute's indicia of authority raises a triable issue of fact as to whether he acted under the color of law.

2. The nature of Officer Schrute's actions indicate that he acted under the color of law.

Despite the purportedly quasi-personal nature of Officer Schrute's actions, his assertion of official authority and motivation to protect the public prove that he acted under the color of law. In determining whether an off-duty officer acted under the color of law, the court considers it "necessary to scrutinize the nature of the act." *Layne*, 627 F.2d at 13. It is also possible for an off-duty police officer to act under the color of law "when he performs official duties that arose in a quasi-personal context." *Barna* 42 F.3d 809 at 818. Courts also look to the surrounding circumstances and relationship of the conduct in question to the officer's official duties in color of law determinations. *Givens*, 121 F.App'x at 988; *Revene v. Charles County Com'rs*, 882 F.2d 870, 873 (4th Cir. 1989). Further, the use of a state issued firearm alone does not constitute state action, but in consideration with other factors, can support action under color of law. *Id.*

Courts determine individuals have acted under the color of law in quasi-personal situations when they assert public authority and their motivation arose from their official status. The *Rossignol* case demonstrates how the court connects quasi-personal actions to official status. In *Rossignol*, the officers' plan to buy all of the newspapers that portrayed them negatively arose from their self-interest as officers. 316 F.3d at 522. As their motivation to act resulted from their status as officers, the court ruled that they acted under the color of law. *Id.* In *Layne*, an off-duty officer shot an individual who had called and threatened him at the police headquarters, after the

officer investigated a domestic disturbance at the individual's home. Though off-duty and out of uniform, the court found the officer acted under the color of law, because the incident "grew out of [the officer's] performance of his official duties." 627 F.2d at 13. In *Martinez* 54 F.3d at 987, however, the court held that an on-duty officer who shot a coworker using his issued revolver was not acting under the color of law because the incident had arisen from "singularly personal frolic."

The court should find that Officer Schrute acted under the color of law since he acted pursuant to his duty and motivation as an officer. Though Officer Schrute attended the game with his family, when he seized Mr. Scott, he acted under his official duty. Throughout the game, Officer Schrute avoided confronting Mr. Scott, only getting significantly involved when he believed Mr. Scott posed a public threat. Officer Schrute even stated, "who knows how many people [Mr. Scott] could have injured," indicating he acted out of public concern as an officer. Schrute Dep. Tr. at 7. Further, when the park attendant addressed the men, Officer Schrute assured her the situation was under control, as it "was nothing compared to the situations [he] usually [had] to control." Schrute Dep. Tr. at 6. Officer Schrute's assertion of control confirms that he believed his official status gave him the authority to handle the situation.

The Police Department Manual states that an off-duty officer should not undertake police action but should call an on-duty officer when confronted with a situation warranting police action (Rule No. 41). If the interaction had been purely personal, Officer Schrute would have allowed the park attendant to intervene or call an on-duty officer. Further, Officer Schrute's official status gave him access to the issued handcuffs he used to seize Mr. Scott. Had Officer Schrute been acting in a purely personal manner, he likely would not have employed his issued tools. Officer Schrute's subsequent disciplinary action confirms the connection of his actions to

his official status, as he was punished for acting “unbecoming of a police officer.” (Pol. Dept. Man. Rule No. 107).

Due to Officer Schrute’s outward indicia of authority in addition to the nature of his actions, including his motivation to act out of concern for public welfare, a reasonable jury could find that Officer Schrute acted under the color of law in his seizure of Mr. Scott, and thus the court should deny the motion for summary judgment.

B. Officer Schrute used excessive force in violation of the Fourth Amendment

Excessive force claims during seizures invoke the protections of the Fourth Amendment and require the balancing of governmental interests and intrusion of individual rights. *Graham v. Connor*, 490 U.S. 386 (1989). In analyzing whether an officer used excessive force, the court looks to whether the force used was “objectively reasonable.” *Henry v. Purnell*, 652 F.3d 524, 532 (4th Cir. 2011). The four factors that courts assess for the objectively reasonable standard are (1) the severity of the crime, (2) whether a reasonable officer would perceive a threat, (3) whether the subject is actively resisting or attempting to resist or flee, and (4) the severity of the injuries caused. *Graham*, 490 U.S. at 386. Finally, the “calculus of reasonableness must allow for the fact that police officers are often forced to make split-second judgments” (*Graham*, 490 U.S. at 396), and is “determined based on the information possessed by the officer at the moment that force is employed” (*Waterman v. Batton*, 393 F.3d 471, 477 (4th Cir. 2005)).

When deciding if an officer used excessive force in the interest of preserving individual rights, the court focuses on the objective reasonableness of the officer’s perception of the threat and degree of force used. In *Henry*, the court favored the interests of individual rights, finding the officer employed excessive force when he shot a fleeing individual being served for a misdemeanor. 652 F.3d at 534. The court determined that the force was not objectively

reasonable, as the officer had no reason to perceive the individual posed a threat; he exhibited “no menacing behavior and [had] no criminal history.” *Id.* Further, in *Young v. Prince George’s County*, where an off-duty FBI officer informed an officer who had pulled him over that he was armed, the court stated that “the fact that a suspect is armed . . . does not render all force used by an officer reasonable.” 355 F.3d 751, 757 (4th Cir. 2004). The court reasoned the officer acted with excessive force as the individual was stopped for a minor traffic violation, complied with orders, never resisted, and thus posed no threat. *Id.*

Only in cases where the likelihood of danger and the severity of potential harm are great will the court find an officer’s use of force objectively reasonable. In *Swann v. City of Richmond*, the officer approached a group of individuals to serve warrants. 309 F.App’x 757 (4th Cir. 2009) (per curiam). As the officer approached, the group scattered attempting to escape in a car. *Id.* During the chase, the defendant officer shot and killed one of the fleeing individuals, mistakenly believing that another officer’s shots came from a suspect inside the car. *Id.* The court found the officer did not use excessive force, as he was in a known crime ridden area, the suspects fled, and they refused to comply with orders. *Id.* at 759.

Similarly, in *Waterman*, officers were not found to have used excessive force during a car chase when they shot at a suspect’s car going eleven miles per hour, because it suddenly lurched forward towards them. 393 F.3d at 474. The court stated, the individual’s apparent “aggressiveness toward officers trying to capture him” justified their actions. *Id.* at 480. See *McLenangan v. Karnes*, 27 F.3d 1002 (4th Cir. 1994) (finding an officer acted objectively reasonably in shooting a fleeing unarmed arrestee, as it was highly probable, he had taken an officer’s unattended gun, and thus could have been armed).

In the instant case, the court should find that Officer Schrute acted with excessive force because the objective factors favor the preservation of Mr. Scott's individual rights over the government interests. Officer Schrute acted unreasonably in his perception of the threat and the degree of force employed. Mr. Scott was not committing a crime at the time of seizure. Courts are less likely to find officers acted objectively reasonably when the seizure is for a minor infraction. *Henry*, 652 F.3d 524, 532 (4th Cir. 2011). Mr. Scott also complied with Officer Schrute's request to sit down and never attempted to resist or harm Officer Schrute. These facts show Mr. Scott posed no threat to Officer Schrute or those around. *See Young*, 355 F.3d 751, 757 (4th Cir. 2004).

Officer Schrute will argue that his actions were justified, because he heard Mr. Scott might have a knife. Even if Mr. Scott had a knife, however, the circumstances did not reach the level of danger to permit Officer Schrute's use of excessive force. Mr. Scott sustained severe harm due to Officer Schrute's excessive force; he suffered debilitating, long term injuries and loss of income. Comparing Officer Schrute's perception of the potential threat that Mr. Scott had a knife to the severity of the injuries Mr. Scott suffered as a result, the court should find Officer Schrute acted unreasonably by using excessive force in his seizure of Mr. Scott.

The strength of the evidence raises a triable issue of fact as to whether Officer Schrute acted with excessive force. Therefore, the court should deny the motion of summary judgment.

CONCLUSION

Based on the facts, it is very likely a reasonable jury could find for Mr. Scott. Officer Schrute's indicia of authority and the nature of his actions prove that he acted under the color of law, and the objective reasonableness analysis indicates he used excessive force in seizing Mr.

Scott in violation of 42 U.S.C. §1983 (2012). Accordingly, the court should deny the defendant's motion for summary judgment.

Respectfully submitted,

Olivia Clark

Attorneys for Michael Scott

Date: February 20, 2020

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Opposition to Defendant Officer Schrute's Motion for Summary Judgment was delivered by hand, this 20 day of February 2020, to Umber Aggarwal, Baker & Dooley, P.C. 1421 Liberty Blvd, Baltimore, MD 21201.

Olivia Clark

Applicant Details

First Name **Hailey**
 Last Name **Cleek**
 Citizenship Status **U. S. Citizen**
 Email Address haileycleek@comcast.net
 Address

Address

Street
409 Buffalo Run
 City
Goodlettsville
 State/Territory
Tennessee
 Zip
37072

Contact Phone Number **615-428-4902**

Applicant Education

BA/BS From **Davidson College**
 Date of BA/BS **May 2016**
 JD/LLB From **Wake Forest University School of Law**
<http://www.law.wfu.edu>
 Date of JD/LLB **December 30, 2019**
 Class Rank **50%**
 Law Review/Journal **Yes**
 Journal(s) **Wake Forest Law Review**
Awaken: The Creative Journal of
Contemporary Bioethics
 Moot Court Experience **No**

Bar Admission

Admission(s) **District of Columbia**

Prior Judicial Experience

Judicial Internships/
Externships **No**

Post-graduate Judicial
Law Clerk **Yes**

Specialized Work Experience

Specialized Work
Experience **Appellate**

Recommenders

Gold, Russell
rgold@law.ua.edu
Coughlin, Christine
coughlcn@wfu.edu
336-758-5430
Collison, Julia
Julia.Collison@usdoj.gov
Hall, Mark
hallma@wfu.edu
3367584476

References

Julia Collison
Trial Attorney, U.S. Department of Justice
Julia.Collison@usdoj.gov
202-305-0102

Mark Hall
Director of Health Law and Policy Program
Wake Forest University School of Law
(336) 758-4476
hallma@wfu.edu

Professor Russell Gold
Associate Professor of Legal Analysis, Writing, and Research
Wake Forest University School of Law
(336) 758-3944
goldrm@wfu.edu

Professor Christine Coughlin
Professor of Legal Writing
Wake Forest University School of Law

(336) 758-5504

coughlcn@wfu.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

August 25, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am a December 2019 JD/MA Bioethics graduate from Wake Forest University School of Law. I am writing to apply for a clerkship in your chambers beginning in 2021 or 2022, after I have completed working as a judicial law clerk for Judge Richard Dietz on the North Carolina Court of Appeals.

I am well suited to clerk in your Chambers because of my strong research, writing, editing, and analytical skills. As a former research fellow at Mayo Clinic, my writing emphasizes clarity, accuracy, and brevity. I served as the Senior Articles Editor of the *Wake Forest Law Review*, and I led our bioethics journal as the Editor-in-Chief. My writing on immigration, health policy, and bioethics has been published in the *California Law Review*, *Wake Forest Law Review*, *Berkeley Journal of Gender, Law & Justice*, and *Harvard Bill of Health*.

My work experience reflects a commitment to public service through litigation and policymaking. Throughout law school, I worked as a litigation clerk in both the Department of Justice Civil and Civil Rights Divisions. Throughout the summers, I received meaningful feedback, drafted numerous assignments, and enjoyed volunteering for additional assignments whenever possible. Additionally, I also worked as a federal policy intern at the Center for Reproductive Rights. In this role, I drafted lobbying materials, met with members of Congress, provided technical assistance on bills, and attended hearings with coalition partners.

In addition to my strong writing and relevant work experience, I also have distinct interpersonal skills. I received the Staff Member of the Year award from my peers on Law Review, and I served as a leader in both our pro bono and LGBT+ organizations.

Enclosed please find my CV, law school transcript, and writing sample. The writing sample is my Legal Analysis, Writing, and Research course brief. Upon request, I am also happy to provide my Comment or Article. If there is any other information that would be helpful to you, please let me know. Thank you for your consideration.

Respectfully,

Hailey Cleek

haileycleek@comcast.net

615-428-4902

HAILEY M. CLEEK

1430 Polo Road
Winston-Salem, NC 27106

615-428-4902
cleehm16@wfu.edu

EDUCATION

Wake Forest University School of Law, Winston-Salem, NC

JD/MA in Bioethics Candidate (GPA: 3.37)

Expected December 2019

- Journals: *Wake Forest Law Review*, Senior Articles Editor
Awaken: The Creative Journal of Contemporary Bioethics, Editor-in-Chief
- Honors: 2017-2018 Law Review Distinguished Staff Member of the Year (voted by peers)
1st Place 2018 Sarah Weddington Writing Prize (national competition)
1st Place 2018 American Society for Bioethics and Humanities Student Writing Prize (national)
CALI Health Care Law and Policy (highest grade in course); CALI Diversity and Discrimination
- Activities: Healthcare Advocacy Coordinator, Pro Bono Project
Co-Founder and Co-President, If/When/How: Lawyering for Reproductive Justice chapter
OUTLaw, Board Member (LGBT+ student organization)

Davidson College, Davidson, NC

Bachelor of Science, *cum laude*, Psychology; Interdisciplinary Minor in Medical Humanities

May 2016

- Activities: Danish Institute for Study Abroad, Copenhagen, Denmark
You Are Not a Stranger Here, President (LGBT+ organization)
The Ethical View, Editor-in-Chief (bioethics publication)

SELECT LEGAL EXPERIENCE

Department of Justice, Washington, D.C.

Incoming Summer 2019

Litigation Clerk (Civil Rights Division)

Represent the Immigrant and Employee Rights Section and enforce anti-discrimination provisions of the Immigration and Nationality Act. Assist in litigation and investigation of employment discrimination, conduct legal research, prepare legal memoranda, and participate in and/or conduct witness interviews.

Center for Reproductive Rights, Washington, D.C.

Incoming Summer 2019

U.S. Federal Policy Intern

Analyze federal legislation and conduct legal research. Monitor and respond to legislative, regulatory, and other policy developments, including congressional hearings and markups, federal rulemakings, and relevant litigation. Draft policy and advocacy materials, including bill analyses, fact sheets, and talking points, for use in lobbying.

Center on Reproductive Rights and Justice, Berkeley, CA

Spring 2019

Remote Researcher

Research legal discourse and develop theories to overturn *Harris v. McRae*, assess multi-state coalitions of economic and reproductive justice advocates to generate partnerships, and identify health policy efforts to improve Black maternal health outcomes.

Department of Justice, Washington, D.C.

Summer 2018

Litigation Clerk (Civil Division)

The Vaccine Litigation Group represents the interests of the Secretary of Health and Human Services in cases filed in the U.S. Court of Federal Claims under the National Childhood Vaccine Injury Act for both trial and appeal. Drafted pleadings, a motion for summary judgment, a research project regarding the 21st Century Cures Act, and memoranda for the Director of the Torts branch explaining rationale for settlement in a case.

SELECT RESEARCH EXPERIENCE

Wake Forest University School of Law, Winston-Salem, NC Spring 2017 – current

Research Assistant for Professors Christine Coughlin, Mark Hall, and Marie-Amélie George

Research intersections between health care law and policy. Projects include coding data for the CDC Immigration Database, cataloguing legal developments for the patient-physician relationship, and updating casebooks. Analyze both how and why LGBT+ laws have changed and examine formation and fragmentation of the LGBT+ movement. Projects include writing memoranda, collecting sources for Article support, and reviewing drafts.

Wake Forest Baptist Medical Center, Winston-Salem, NC Summer 2017

Co-investigator

Conducted legal and public health research relating to the new public housing smoking ban enacted by the Department of Housing and Urban Development. Wrote memoranda, interviewed stakeholders, and analyzed public health data.

Davidson College, Davidson, NC Summer 2015

Abernethy Scholar

Designed and analyzed an experiment investigating factors that influence sexist perceptions of women seeking healthcare. Presented at the Annual Conference of the Society of Southeastern Social Psychologists.

Mayo Clinic, Rochester, MN Summer 2014

Vann Fellow

Co-authored a systematic review on risk prediction for acute kidney injury and end-stage renal disease (publication pending). Participated in ethics consults, attended bioethics lecture series, and shadowed surgical procedures.

PUBLICATIONS

Hailey Cleek, Article, *Borders Across Bodies*, 34 BERKELEY J. GENDER L. & JUST. __ (forthcoming 2019).

Awarded 1st Place 2018 Sarah Weddington Writing Prize for New Student Scholarship in Reproductive Rights (national writing competition judged by Center for Reproductive Rights and UC Berkeley Center on Reproductive Rights and Justice).

Hailey Cleek, Comment, *Sanctuary Clinics*, 53 WAKE FOREST L. REV. 1169 (2018).

COMMENTARIES AND SHORTER WORKS

Hailey Cleek, *Ohio's "Fetal Heartbeat" Bill and the Effort to Restrict Abortion Access*, Blog, HARVARD BILL OF HEALTH (Nov. 28, 2018), <http://blog.petrieflom.law.harvard.edu/2018/11/28/ohios-fetal-heartbeat-bill-and-the-effort-to-restrict-abortion-access/>.

Hailey Cleek, *A Labor of Love: Modernizing Family and Medical Leave*, Blog, IF/WHEN/HOW: LAWYERING FOR REPRODUCTIVE JUST. (Sept. 7, 2018), <https://www.ifwhenhow.org/modernizing-fmla-economic-reproductive-justice/>.

Hailey Cleek & Mike Garrigan, *Fourth Circuit Limits Qualified Immunity in Sexually Intrusive Searches* (Mar. 21, 2018), 4th Cir. Blog, WAKE FOREST L. REV., <http://wakeforestlawreview.com/2018/03/fourth-circuit-limits-qualified-immunity-in-sexually-invasive-searches/>.

Hailey Cleek & Raquel Macgregor, *Fourth Circuit Grants Hearing on New Presidential Proclamation Limiting Immigration* (Nov. 21, 2018), 4th Cir. Blog, WAKE FOREST L. REV., <http://wakeforestlawreview.com/2017/11/fourth-circuit-grants-hearing-on-new-presidential-proclamation-limiting-immigration/>.

Hailey Cleek, *DOJ Joins High-Profile Lawsuit Against UnitedHealth Alleging Medicare Fraud* (Sept. 13, 2017), Blog, WAKE FOREST J. BUS. & INT. PROP., <http://ipjournal.law.wfu.edu/2017/09/justice-department-joins-lawsuit-against-unitedhealth-alleging-medicare-fraud/>.

Hailey Cleek, *H.R. 1313 Undermines Health Privacy Protections*, AWAKEN: CREATIVE J. CONTEMPORARY BIOETHICS (June 15, 2017), <https://awakenwfu.com/2017/06/15/h-r-1313-undermines-health-privacy-protections/>.

Jessica J. Good & Hailey Cleek, *Implicit Attitudes*, in THE SAGE ENCYCLOPEDIA OF INDUSTRIAL AND ORGANIZATIONAL PSYCHOLOGY (S.G. Rogelberg ed., 2017).

Hailey Cleek, *Thinking Beyond Pink: An Analysis of Health Disparities in Breast Cancer Development*, MEDIUM (Sept. 30, 2016), <https://medium.com/@haileycleek/thinking-beyond-pink-an-analysis-of-health-disparities-in-breast-cancer-development-d5f0cdced987> (illustrated by Hampton Stall).

SELECT PRESENTATIONS

Hailey Cleek, Presentation at the Women's Leadership Conference at Davidson College, Davidson, NC, *Sanctuary Clinics* (Mar. 16, 2019).

Hailey Cleek, Presentation at University of North Carolina School of Law, Chapel Hill, NC, *The Price of Rights* (Feb. 11, 2019).

Hailey Cleek, Moderated Discussion at Wake Forest University School of Law, Winston-Salem, NC, *Reproductive Rights in North Carolina* (Jan. 28, 2019).

Hailey Cleek, Presentation at the Annual Conference of the American Society for Bioethics and Humanities, Anaheim, CA, *Borders Across Bodies* (Oct. 20, 2018).

Hailey Cleek, Presentation at the National Reproductive Ethics Conference, Albany, NY, *Opening the Clinic Doors: An Analysis of Barriers to Assisted Reproductive Technology for LGBT+ Americans* (Apr. 8, 2016).

Hailey Cleek & Jessica J. Good, Blitz talk presentation at the Annual Conference of the Society of Southeastern Social Psychologists, *The Doctor Will See You Now: Male Versus Female Confrontation of Benevolent Sexism in a Healthcare Setting*, Winston-Salem, NC (Oct. 2015).

Ryan T. Anderson, Hailey Cleek, A. Hart, et al., Poster abstract presented at the 5th Annual Mayo Clinic Robert and Arlene Kogod Center on Aging Conference, Rochester, MN, *Empowering ESRD Patients Through Dialysis Prognostication* (Oct. 23–25, 2014).

VOLUNTEER AND INTERESTS

Foster dogs; ACC basketball fan; Vinyasa yoga; recreating family recipes

Hailey Cleek
Wake Forest University School of Law
Cumulative GPA: 3.37

Fall 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Legal Analysis, Writing, and Research	Gold	A-	2	
Civil Procedure	Grebeldinger	B	3	
Professional Development	Barrow	S	0	Satisfied
Torts	Peeples	B+	4	
Contracts	Simmons	B	3	
Criminal Law	Rose	B	3	

Spring 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Property	Knott	B+	4	
Contracts II	Simmons	B	3	
Legal Analysis, Writing, and Research	Gold	A	2	
Civil Procedure II	Grebeldinger	B+	3	
Professional Development	Barrow	A	1	Not counted towards GPA
Constitutional Law I	Gilreath	B+	3	

Fall 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Appellate Advocacy	Korzen	B	2	
Human Reproduction and the Law	Boone	A-	2	
Health Care Law and Policy	Hall	A+	3	Highest grade
Law Review	Gold	S	0	Satisfied
Decedents' Estates and Trusts	Marsh	B+	3	

Spring 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Family Law	Boone	B+	3	
Diversity and Discrimination	Perdue	A	3	Highest grade
Elder Law Clinic	Mewhinney	B	4	
Legislation and Administrative Law	Margaret Taylor	B+	3	
Law Review	Gold	CR	2	Completed Requirement - not counted towards GPA

Independent Study: Intensive	Boone	H	2	Not counted towards GPA - honors
Law Review Comment selected for Publication				

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Evidence	Vigil	A-	4	
Gender and the Law	Gilreath	A-	2	
Business Organizations	Verstein	B	4	
Law Review	Gold	S	0	Satisfied and continuing
Mass Media Law	Meazell	A-	2	
Immigration Law: Selected Topics	Margaret Taylor	A-	2	

Article selected for publication with Berkeley J. Gender, Law, & Just.

Spring 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Sexual Identity and the Law	Gilreath	A	2.0	Highest grade in course
Professional Responsibility	Murphy	B+	2.0	
Federal Courts	Middlebrooks	B	3.0	
Poverty Law	Virgil	A-	2.0	
Constitutional Law II	Gilreath	B	2.0	
Law Review	Gold	CR	2.0	Completed requirement

Grading System Description

4.0 scale

Hailey Cleek
Davidson College
Cumulative GPA: 3.648

Fall 2012

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Elementary German I	McCarthy	A	1	
Justice and the Family	Shaw	B	1	
Molecules, Genes, & Cells	Barsoum	B-	1	
Calculus I	Davis	P	1	Pass

Spring 2013

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Contemporary American Seekers	Wills	B+	1	
Elementary German II	McCarthy	A	1	
Child Psychopathology	Stutts	A	1	
Memory	Marshall	A	1	

Fall 2013

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Medical Ethics	Stell	A	1	
Intermediate German	McCarthy	A-	1	
Cognitive Psychology	Munger	B+	1	
Social Psychology	Good	A	1	
Tutorial	Barton	A		

Spring 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
African-American Religious Traditions	Wills	P	1	Pass
Psych Research: Design and Analysis	Tonidandel	B-	1	
Psychology of Aging	Multhaup	B	1	
Hollywood Alternatives (translation)	McCarthy	A-	1	

Fall 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Guilty Pleasures of Pop Culture		UG	1	Abroad - Danish Institute for Study Abroad
Positive Psychology		UG	1	Abroad - Danish Institute for Study Abroad

Health Perspectives on Obesity	UG	1	Abroad - Danish Institute for Study Abroad
Impact of Epidemic Disease on European History	UG	1	Abroad - Danish Institute for Study Abroad

I took courses through the Danish Institute for Study Abroad while I was living in Copenhagen, Denmark. Davidson College counted these for credit hours but did not factor in anything for GPA considerations. The American university affiliate for DIS is the University of Minnesota - Minneapolis

Spring 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Health Disparities US & Beyond	Armstrong-Hugh	A-	1	
Independent Study	Eijkholt	A	1	
Child Development Research	Leyva	A-	1	
Psychology of Prejudice	Good	A-	1	

Fall 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Behavioral Neuroscience	Ramirez	B	1	
Gender and Sexuality	Horowitz	A	1	
Religion, Ethics, & Medicine	Lustig	A	1	
Philosophy of the Mind	Robb	P	1	

Spring 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Issues in Psychology	Multhaup	A	1	
Behavioral Neuroscience Seminar	Ramirez	A	1	
The Obesity Epidemic	Stutts	A	1	

Grading System Description

4.0 scale; Davidson College courses (with the exception of two-credit intensive courses numbered 103) all carry one course credit. One course credit is equivalent to four semester credits.

Hailey Cleek
Wake Forest University Graduate School of Arts and Sciences
Cumulative GPA: 3.835

Fall 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Bioethics Theory	Ana Iltis	A	3	

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Clinical Ethics	John Moskop	A-	3	

Awarded national American Society for Bioethics and Humanities Student Writing Prize

Grading System Description

4.0 scale

August 25, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I write to highly recommend Hailey Cleek for a clerkship in your chambers. Hailey was one of the best students in my Legal Analysis, Writing, and Research ("LAWR") class during her first year of law school, and she has stood out from when I first met her as one of the richest conceptual thinkers in any class I have taught at Wake Forest. Even as a first-year student, Hailey often considered arguments and thought about deeper policy implications that my other students did not. We have remained in touch since then, and that relationship has given me a greater chance to see how Hailey thinks. Her thinking is creative and rigorous.

LAWR is a required year-long course for all first-year law students at Wake Forest. It uses a series of simulated exercises that develop students' skills in legal research, legal writing, oral argument, client advocacy, and client interviewing. Due to the relatively small class size (22 students) and the interactive design of the curriculum, I hope to offer a helpful perspective on Hailey's work.

Hailey wrote one of the best briefs in my class during her first year of law school. Her brief was well-researched and supported and told a compelling narrative of law and fact. Hailey's brief stood out from a strong set of briefs because of how she explained the policy implications of the competing rules and provided reason for the judge to care about an otherwise-highly-technical legal issue. She understood the stakes of the legal issue in a broader conceptual way than her colleagues did.

I am very pleased to recommend Hailey. If you would like additional information, please feel free to contact me at 336-758-3944 or russell.gold@wfu.edu.

Very truly yours,

Russell M. Gold
Associate Professor of Legal Analysis, Writing, and Research
Wake Forest University School of Law

Russell Gold - rgold@law.ua.edu

September 08, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

This letter serves as a recommendation for Ms. Hailey Cleek. I am a Professor of Law at Wake Forest University School of Law. I also have appointments in the Wake Forest University School of Medicine's Translational Science Institute and the Wake Forest University Graduate School of Arts and Sciences. I have worked closely with Ms. Cleek for the past four years in several different capacities, including acting as her thesis advisor for her Master of Arts degree in Bioethics. She has continued to conduct research for me since she graduated from Wake. We are currently considering a co-authored article. I highly recommend Ms. Cleek. This is an individual whose application you should favorably consider.

Ms. Cleek is in a small class of the very top students with whom I have had the pleasure to work. She is extraordinarily bright, highly-organized, and analytical. In addition to her academic abilities and her commitment to public service, she has an excellent work ethic. I am constantly impressed by her good judgment and, most importantly, her high level of integrity.

Three years ago, Ms. Cleek began to work with me to revamp an on-line bioethics journal, *Awaken: The Creative Journal of Contemporary Bioethics*. As Editor-in-Chief, she renamed the journal to make it more accessible, moved it to a better web-based platform, persuaded some talented students to join the editorial board, solicited excellent articles, and published compelling commentary. Every time she and I met, she would inspire me with her ideas and her ability to get the job done. She, alone, made *Awaken* the journal it is today. Because of her leadership, we have our first new student-lead editorial board. Following Ms. Cleek's capable footsteps, these students are excited about taking *Awaken* to the next level.

Ms. Cleek is an exceptional scholar. Whether she is drafting memos and briefs for her various legal writing classes, or writing law review articles, her work product is outstanding. Her writing is clear, organizing, and her analysis is always insightful. As you have seen by her resume, she has already won national awards for her scholarship. Ms. Cleek's scholarship is already so sophisticated that I, along with other health care scholars, cite to work. What I really appreciate about Ms. Cleek's writing, is that while her skills and abilities are superior, she consistently strives to improve. She is open to constructive feedback and she puts the time and effort into submitting the best possible work product.

I have a lot of confidence in Ms. Cleek. Despite the fact that she had a great deal of responsibility with her dual-degree course load, law review, and her many extra-curricular activities, she always made time to go the extra mile with faculty or student peers with whom she works. When I speak with others about Ms. Cleek, they invariably remark about how helpful she is when working with them. I have found working with her to be a pleasure. She is definitely a professional role model.

I also appreciate Ms. Cleek's flexibility with her work. Last summer, I was working on a book project. I had a co-author who was unable to meet her obligations. Despite the fact that Ms. Cleek already had a job, she agreed to assist me with researching one of the chapters. Her research turned into an outstanding proposed outline that was so well done that I was not only able to meet my obligations with the book but also fill in the other gaps. Ms. Cleek was fully supportive and provided me with good constructive feedback. Her positive "can-do" attitude and flexibility meant a lot to me, particularly during the hardships of the current pandemic.

I have a lot of confidence in Ms. Cleek and I hope that you will consider her application favorably. Please let me know if you have any questions.

With kindest personal regards, I am

Very truly yours,

Christine Nero Coughlin

Christine Coughlin - coughlcn@wfu.edu - 336-758-5430



U.S. Department of Justice
Civil Division
Washington, D.C. 20002

Julia M. Collison

March 19, 2019

Re: Recommendation for Clerkship Applicant Hailey Cleek

To Whom it May Concern:

Ms. Cleek interned for ten weeks with Office of Vaccine Litigation at the Department of Justice in the summer of 2018, and we recommend her for a judicial clerkship.

Attorneys in the Vaccine Litigation Section defend the Secretary of Health and Human Services in lawsuits filed in the United States Court of Federal Claims alleging vaccine-related injury under the National Childhood Vaccine Injury Act of 1986. These cases routinely involve claims of catastrophic injuries or death, and the vast majority involve competing medical expert witnesses and theories of causation. Summer volunteer law clerks are not assigned to a particular attorney or project. Rather, they take on a variety of assignments for any of the 40 attorneys in the office.

Ms. Cleek worked on a variety of projects that materially contributed to the office. Her written advocacy was put to good use with several substantive research and writing assignments. She drafted five Rule 4(c) reports (pleading setting forth the government's view of the salient facts and applicable law in response to a petition for compensation), one memorandum for the Director of the Torts Branch explaining our rationale for settling a case, two research memoranda that involved complex areas of law, and a motion for summary judgment. The motion for summary judgment was a complex project, as it required her to dig deeply into the record and thoroughly consider a number of factual issues. Ms. Cleek rose to that challenge and artfully explained why a dismissal was appropriate. With each assignment, Ms. Cleek displayed refinement of her work product, incorporated feedback, thoughtfully engaged in well-considered and researched analysis, and took pride in the quality of her work project.

Ms. Cleek was a strong summer intern. Her writing reflected her ability to identify appropriate legal and medical issues and craft persuasive arguments in support positions critical to the mission of our office. She eagerly sought out more complex and challenging assignments, never hesitating to perfect her work. Our work involves challenging and novel scientific issues, and Ms. Cleek quickly overcame a steep learning curve. She also demonstrated reliability and efficiency, and her work product required little revision. Lastly, Ms. Cleek was a team player; she sought out opportunities to meet people within DOJ, engaged in office activities, and often volunteered to take on the less glamorous jobs.

In short, productive, hard-working, and dedicated, Ms. Cleek was a valued intern in our office. She leaves here with our recommendation, and we are confident she will be a successful judicial clerk.

Sincerely,

A handwritten signature in black ink, appearing to read "JM Collison". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Julia M. Collison
Trial Attorney
U.S. Department of Justice
Torts Branch, Civil Division

August 25, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I write to give my highest recommendation for Hailey Cleek as your law clerk. I know Hailey well from her time at Wake Forest University, as a student in class, as an advisee, and as my research assistant. Also, I was a federal law clerk and have served on the law school's law clerk committee and thus I have a good appreciation for the qualities you likely seek in clerks.

Hailey is one of the most impressive law students I have known during my three decades of teaching. She is extraordinarily devoted to learning about law and public policy and has seized every opportunity available to engage with the various subject areas that interest her. She pursues her law and policy interests tirelessly, and has accomplished more outside the classroom than just about any other student I've known.

In the classroom, Hailey's record speaks for itself. She is a very bright and hardworking student, and is mature in her approach and perspective beyond her years.

Hailey is also very impressive interpersonally. She is an eager and enthusiastic assistant, and is always open to interesting conversations. She is the type of student who really makes teaching and mentoring feel rewarding.

I'm confident you will be equally impressed with Hailey. Please let me know if I can provide additional information.

Sincerely,

Mark A. Hall
Professor of Law and Public Health

336-758-4476 hallma@wfu.edu

Mark Hall - mhall@wakehealth.edu

HAILEY M. CLEEK

1430 Polo Road • Winston-Salem, NC 27106
615-428-4902 • cleehm16@wfu.edu

Writing Sample

The attached writing sample is an excerpt from a Brief in Opposition to Defendant's Motion to Dismiss for Summary Judgment that I submitted as part of an assignment for my spring Legal Analysis, Writing, and Research course. The brief, which was researched and written entirely by me, involved the permissibility and standards for allowing a guardian to change citizenship of an incompetent ward.

Specifically, the questions presented for the assignment were:

- I. For purposes of diversity jurisdiction, should the court adhere to established law regarding guardians' responsibilities by allowing a guardian to change citizenship of an incompetent ward when acting in the best interests of the ward?
- II. Under 28 U.S.C. § 1332(c)(2), does moving an incompetent citizen for purposes of securing safety, medical care, and closer familial proximity meet the best interest test for changing an incompetent's citizenship?

In the brief, I argue, on behalf of the plaintiff-guardian, that the court should adopt the best interests test, as it follows the majoritarian approach and is consistent with the legislative intent behind the established responsibilities of guardianship. The entire document is available upon your request.

ARGUMENT

With rapid advancements in health, medicine, technology, and science, elderly Americans now live longer than ever in a graying society. With seventy-seven million baby boomers poised to join the ranks of forty million seniors living in the United States, it is important to reaffirm the protections and securities endowed in guardians overseeing the care of their loved ones. Sandra L. Colby & Jennifer M. Ortman, *The Baby Boom Cohort in the United States: 2012 to 2060*, U.S. Census Bureau, at 1, 12 (2014), <http://www.census.gov/content/dam/Census/library/publications/2014/demo/p25-1141.pdf>. In recognizing the substantial need to address the delicate balance between traditional guardian powers and ward interests, the Court should follow the majority approach in adopting the best interests test. It is within Blair's best interest to change citizenship in order to secure safety, medical care, and closer familial proximity to his guardian daughter.

I. THE COURT SHOULD ADOPT THE BEST INTERESTS TEST FOR ASSESSING IF GUARDIANS CAN CHANGE THE CITIZENSHIP OF THEIR WARDS IN RECOGNITION OF THE MAJORITY APPROACH OF REAFFIRMING GUARDIAN POWERS.

Under 28 U.S.C.A. § 1332(c)(2), the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same state as the infant or incompetent. 28 U.S.C. § 1332(c)(2) (2016). Federal courts have diversity jurisdiction only when all plaintiffs are citizens of different states than all defendants. *Strawbridge v. Curtiss*, 7 U.S. 267 (1806). It is well-settled that whether federal diversity of citizenship jurisdiction exists is determined by examining the citizenship of the parties at the time the complaint is filed. 13E Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3608 (3d ed. 1998). To determine if all plaintiffs are diverse from all defendants, courts look at each party's domicile, created by physical presence and the intent to remain in that state indefinitely. *Id.* § 3613. However, an incompetent individual

cannot form the proper intent to remain indefinitely. *Id.* § 3616. Thus, a majority of courts have held that the guardian of an incompetent can change the domicile of the ward when acting in the best interests of the ward. *See Acridge v. Evangelical Lutheran Good Samaritan Soc’y*, 334 F.3d 444, 453 (5th Cir. 2003); *see also Dakuras v. Edwards*, 312 F.3d 256, 258 (7th Cir. 2002); *Rishell v. Jane Phillips Episcopal Mem’l Med. Ctr*, 12 F.3d 171, 173 (10th Cir. 1993). Only one court uses the per se rule, holding that an incompetent individual can never change their domicile. *Long v. Sasser*, 91 F.3d 645, 647-648 (4th Cir. 1996). This Court should adopt the best interests test, as it follows the majoritarian approach and is consistent with the legislative intent behind the established responsibilities of guardianship.

A. The best interest test reaffirms established guardianship provisions, which already secure broad powers for guardians.

The per se rule and its continuing inability to change domicile runs counter to the sweeping powers already vested in guardians. The effects of a judicial appointment of a guardian are substantial, as a previously competent adult may no longer have the right to decide how to spend her funds, accept health care, or where to live. Fla. Stat. Ann. § 744.361 (West 2016). Under Florida statute, a plenary guardian refers to a person who can “exercise all delegable legal rights and powers of the ward after the court has found that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property.” Fla. Stat. Ann. § 744.102 (West 2016). In Florida, the guardian manages all of the ward's property and the rents, income, issues, and profits from it, whether accruing before or after the guardian's appointment; guardians make provisions for medical, mental, rehabilitative, and personal care services when considering residential decisions for the ward. Fla. Stat. Ann. § 744.361 (West 2016).

Guardianship, at its heart, promotes the best interests of the incapacitated person in a sacred trust relation. 39 Am. Jur. 2d Guardian and Ward § 1. Guardian responsibilities, whether

the guardianship relates to a minor or incompetent individual, are substantially the same throughout the nation. 39 Am. Jur. 2d Guardian and Ward § 86. The best interests test may be interpreted as a safeguard to protect the rights of wards, as courts retain the duty to supervise guardians with respect to their wards. Daniel B. Griffith, J.D., *The Best Interests Standard: A Comparison of the State's Parens Patriae Authority and Judicial Oversight in Best Interests Determinations for Children and Incompetent Patients*, 7 Issues L. & Med. 283, 338 (1991). The best interests test reaffirms basic responsibilities of “close and appropriate” guardian powers in accordance with “natural instinct” of the rights already endowed unto them. *Gibbs v. Berger*, 59 A.D.2d 282, 399 N.Y.S.2d 304, 307 (App. Div. 3d Dep’t 1977). The Uniform Guardianship and Protective Proceedings Act of 1997 was enacted, in part, to provide a system of guardianships which serve the best interest of the ward for states to easily adopt. Unif. Guardianship & Protective Proc. Act § 107 (Nat’l Conference Comm’rs on Unif. State Laws 1997). Changing domicile in advocacy of best interests is simply a reaffirmation of the power of guardians acting on behalf of their wards.

The overwhelming public policy consideration of guardianship law is “the protection of the ward.” *Hayes v. Guardianship of Thompson*, 952 So.2d 498, 505 (Fla. 2006). Guardianship courts “have wide discretion in fashioning remedies to satisfy the exigencies of the circumstances.” *Romano v. Olshen*, 153 So. 3d 912, 918 (Fla. Dist. Ct. App. 2014). Florida statutory law demonstrates that guardians have the ability to change the domicile of their respective wards. *The Florida Bar*, 537 So. 2d 500, 509 (Fla. 1988). Florida recognizes the importance of vesting substantial power in guardians with respect to domicile.

Other jurisdictions throughout the United States have already ruled that guardians can change the citizenship of their incompetent wards for purposes of diversity. *Acridge*, 334 F.3d at

453; *Dakuras*, 312 F.3d at 258; *Rishell*, 12 F.3d at 173. These courts determined whether they would follow the per se rule or the best interests test. The per se rule holds that guardians can never change the domicile of their wards for diversity purposes by moving them across state lines. *Acridge*, 334 F.3d at 450. The best interests test holds that if the best evidence available shows the “law must allow a guardian, vested with legal authority, to determine domicile for the best interests of that person, then the guardian can change the citizenship of the ward.” *Rishell*, 12 F.3d at 174. The majority of courts have adopted the best interests test in recognizing the need for individualized fact-dependent inquiries in establishing domicile. *Acridge*, 334 F.3d at 449.

In *Rishell v. Jane Phillips Episcopal Memorial Medical Center*, the guardian relocated the incompetent individual to Louisiana in order for the incompetent individual to obtain better medical care. *Rishell*, 12 F.3d at 172. When the guardian then attempted to sue an Oklahoma hospital in federal court on behalf of the incompetent individual, the hospital moved to dismiss on the grounds that, because the guardian lacked the authority to change the incompetent individual’s domicile, no diversity jurisdiction existed. *Id.* The Tenth Circuit found it was in a ward’s best interests for the guardian to determine domicile on behalf of a ward; to refuse a guardian the power to change domicile directly counters the guardianship presumptions that it was “designed to protect.” *Id.* at 174. Allowing guardians the ability to exercise changes in domicile helps to secure protections for the ward.

In *Dakuras v. Edwards*, the Seventh Circuit agreed with the Tenth Circuit’s holding in *Rishell*. *Dakuras*, 312 F.3d at 256. In *Dakuras*, a former boyfriend sued his incompetent former live-in girlfriend and her guardians, alleging fraud. *Id.* The district court dismissed for lack of diversity. *Id.* The boyfriend appealed, and the Seventh Circuit held that guardians could change a person’s domicile for diversity purposes stating that, “the responsibility for making the essential

life choices of children and wards is vested not in them but in their parents or guardians, and we cannot see why the choice of domicile should not be treated as one of those life choices.” *Id.* at 258. Guardians of incompetent individuals can change domicile in the same way they can change domicile for children.

The Fifth Circuit adopted a similar precedent when considering the case of *Acridge v. Evangelical Lutheran Good Samaritan Soc’y*. *Acridge*, 334 F.3d at 444. In 1996, the wife of an incompetent individual, acting as guardian, placed her ward-husband in a retirement center in New Mexico as a result of a rapid deterioration in his mental status caused by Alzheimer's dementia. *Id.* at 446. The guardian-wife became dissatisfied with the treatment her ward-husband was receiving and shortly transferred him to a center in Texas. *Id.* Later, when guardian-wife brought a negligence action against the nursing home and its administrators, the Fifth Circuit held that she could change the domicile of her ward-husband for purposes of diversity jurisdiction so long as she was acting in her ward-husband’s best interests. *Id.* at 448. Citing *Rishell*, the Fifth Circuit articulated that refusing a guardian the power to change domicile directly counters the guardianship presumptions that it was “designed to protect.” *Id.* at 450; *Rishell*, 12 F.3d at 174. Recognizing that an incompetent individual is “unable to fend for himself and completely dependent upon those closest to him,” the *Acridge* court reaffirmed the basic provisions of guardianship. *Acridge*, 334 F.3d at 450.

1. The per se rule risks undermining the original purpose of diversity jurisdiction.

The per se rule does not always account for instances where plaintiffs may potentially face local biases from state courts. Only the Fourth Circuit has declined to follow the best interests test in favor of the per se rule. *Long v. Sasser*, 91 F.3d 645, 647-648 (4th Cir. 1996). In *Long*, a guardian brought a medical malpractice action on behalf of his ward, alleging federal

jurisdiction based on diversity of citizenship. *Id.* at 645. The Fourth Circuit held that the ward lacked capacity to form intent to establish a new domicile for diversity purposes and that the guardian could not establish a new domicile for ward. *Id.* Yet, the Fourth Circuit specifically noted that the *Long* case did not raise the primary concern addressed by diversity jurisdiction, a fear of local bias against litigants from out of state. *Id.* at 648.

Here, there is a potential threat of local bias influencing the course of litigation within Florida for Weston’s case. Overall, long term care facilities support an estimated \$20.2 billion of Florida’s economy and contribute to over 259,000 jobs through employment of both direct caregivers and staff. *Facts About Long Term Care In Florida*, Florida Health Care Association (2016), http://www.fhca.org/media_center/long_term_health_care_facts. It is reasonable to believe that local courts could potentially have biases towards supporting a flourishing business industry within Florida. Adopting the best interests test, in following majority precedent, provides potential plaintiffs the opportunity to fairly resolve their disputes within an appropriate federal court.

II. IT IS WITHIN THE BEST INTERESTS OF BLAIR TO CHANGE CITIZENSHIP IN ORDER TO SECURE SAFETY, MEDICAL CARE, AND CLOSER FAMILIAL PROXIMITY.

When considering the best interests of a ward, a court must consider a “mosaic of circumstances” in establishing domicile. *Juvelis by Juvelis v. Snider*, 68 F.3d 648, 656 (3d Cir. 1995). The best interests test looks to the opinions of parents or guardians who are acting in good faith and in the best interest of the individual, as well as objective factors such as the quality of the individual's attachment to his proposed domicile, individual motive in seeking new domicile, duration of her relationship to the locale, abandonment of a prior residence, and location of assets and friends. *Id.* at 655–56. As long as a guardian is acting “in good faith” in accordance

with these objective factors, guardians have the power to change the domicile of the ward. *Id.* By promoting the best quality of care, securing social and emotional needs, and acting in good faith, Weston acted in the best interests of her ward father.

A. Weston moved Blair in order to ensure the best quality of care by protecting his health and safety.

It was in Blair's best interests to get him out of Defendant's facility. In *Rishell*, the legal guardian of a ward was granted new domicile for the ward in recognition of the guardian securing better medical care for the ward. *Rishell v. Jane Phillips Episcopal Mem'l Med. Ctr.*, 12 F.3d 171, 172 (10th Cir. 1993). On July 23, 2016, Blair was assaulted by another resident of the Lakewood Center; the CNA on duty did not stop the assault. Blair's left eye was so severely injured that it had to be surgically removed. Weston moved her father Blair away from a facility that she believed to be negligent in overseeing the care of her father. Similarly to *Acridge*, plaintiff admits that she removed her ward from the care facility because she was "dissatisfied with the care" that he was receiving. *Acridge v. Evangelical Lutheran Good Samaritan Soc'y*, 334 F.3d 444, 453 (5th Cir. 2003). Defendant's Shirley Hardy suspected that Weston might be dissatisfied with the care of high-turnover among staff, yet Weston's displeasure with care only grew after the assault. The Magnolia Center boasts both an impressive low turnover rate among its staff and a better safety record than Lakewood, and Blair continues to receive physical therapy about three times a week. Here, the court should reaffirm the importance of guardians prioritizing the health and safety for their wards.

B. Moving Blair helped secure significant emotional and social needs.

Weston maintains that the move for Blair into the Magnolia Center was within the best interests of the family, as she is able to be more directly involved with supportive caring of her ward father. The Magnolia Center is only about a 90-minute drive from Atlanta to Macon; thus,

Plaintiff can visit her father once or twice a week. In *Love v. Roosevelt Hosp.*, plaintiff guardian moved her brother ward across state lines to be near her and her family; plaintiff later successfully filed a diversity suit to prosecute the hospital for complications during the ward's surgery. *Love v. Roosevelt Hosp.*, No. 92 CIV. 4211 (JSM), 1993 WL 190345, at *1 (S.D.N.Y. June 2, 1993). It was within Blair's best interests to be closer to his daughter who can provide "the intangibles of love, affection, and attention that might aid in [his] recovery." *Gibbs v. Berger*, 59 A.D.2d 282, 399 N.Y.S.2d 304, 307 (App. Div. 3d Dep't 1977). Similarly to *Juvelis*, Blair will likely continue to reside in Georgia for the rest of his life, and Blair has the significant social and emotional benefit of seeing his daughter frequently. *Juvelis*, 68 F.3d at 657.

While it is unfortunate that Blair had to leave his roommate George, it is unreasonable to ask families to stay in threatening facilities that result in hospital stays. Additionally, Blair is able to use music therapy in his new therapy regimen, which Plaintiff contends is emotionally important to Blair as a retired high school music teacher. Like *Juvelis*, Blair can express attachment to Magnolia because of his enjoyment in music therapy. *Juvelis*, 68 F.3d at 657. Blair's music therapist has noted improvements in Blair's gait and speech. Blair is new to Georgia and did have to leave some friends, but Blair was leaving Lakewood regardless.

C. Weston was acting in good faith to promote health and safety for the ward rather than attempting to solely manufacture diversity.

While Weston was aware of the potential for federal jurisdiction, she was not moving Blair for the sole purpose of manufacturing diversity. However, Defendant may contend that Weston attempted to manufacture diversity jurisdiction in this case by moving Blair to Georgia, arguing that Weston knew of the potential to enter federal court on the basis of diversity. Similarly to *Rishell*, where the ward had no intent to return to the home state nor was moved solely to create diversity of citizenship, Weston was simply trying to get her father to better care.

Rishell, 12 F.3d at 174. Manufacturing diversity is not relevant to this case; Weston was acting in good faith to help her father.

* * *

Blair's quality of life has substantially improved without the threat to his physical safety, and Weston's motive is sincere in seeking new domicile on behalf of her father. When applying the best interests test, a court establishes whether or not the guardian has promoted safety, care, and assurance. In following the majority position throughout the country, the court should adopt the best interests test in reaffirming the provisions of guardian power.

Applicant Details

First Name **Matthew**
 Middle Initial **J**
 Last Name **Connor**
 Citizenship Status **U. S. Citizen**
 Email Address connor2022@lawnet.ucla.edu

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Applicant Education

BA/BS From **Northwestern University**
 Date of BA/BS **June 2016**
 JD/LLB From **University of California at Los Angeles (UCLA) Law School**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=90503&yr=2011
 Date of JD/LLB **May 20, 2022**
 Class Rank **Not yet ranked**
 Law Review/Journal **Yes**
 Journal(s) **Journal of International Law and Foreign Affairs, Production Editor.**
Journal of Environmental Law and Policy, Managing Editor.
 Moot Court Experience **Yes**

Moot Court
Name(s) **Fall 2020, Competitor.**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Hecht, Sean
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Sander, Richard
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Michaels, Jon
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References

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2. Professor Reuel Rogers, Northwestern University. Department of Political Science.
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Matthew J. Connor

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June 15, 2021

The Honorable Elizabeth W. Hanes
United States District Court for the Eastern District of Virginia
Spottswood W. Robinson III & Robert R. Merhige, Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Re: Judicial Clerkship Application - 2022-2024 Term

Dear Judge Hanes:

I am a rising third-year law student at UCLA School of Law and I am seeking a clerkship with your chambers in the Eastern District of Virginia for the 2022-2024 term. Clerking for your chambers would provide an immersive exposure to trial proceedings, a quality mentorship experience, and the chance to accelerate my legal research and writing abilities, all of which would serve me well as a litigator afterward. I am eager to continue getting to experience new parts of the United States and therefore would be excited to serve in Richmond.

Since my time as an undergraduate student at Northwestern University, I have consistently pushed my analytical, research, and writing skills. In addition to graduating *magna cum laude* from the journalism program, I completed an honors thesis in International Studies, wrote and co-authored two research articles that went on to win international and domestic research awards. I held leadership positions, worked as a Research Assistant for multiple professors while at Northwestern, and took the chance to study abroad three times, imbuing my analytical abilities with the power of adaptability. Following college, after working as a reporter covering the White House, Supreme Court, Senate, House, and D.C., I taught high school math as a Teach for America Corps Member. Teaching enabled me to balance long work weeks with enhanced leadership capabilities in the classroom, and increasingly effective communication and interpersonal skills, whether teaching a class of ninth graders, communicating with a parent over the phone, or making my voice heard at staff meetings.

At UCLA School of Law, I honed my research, writing and analytical skills for the legal arena. As a Managing Editor for the Journal of Environmental Law and Policy and a Production Editor for the Journal of International Law and Foreign Affairs, I am able to refine my attention to detail and editing skills. In addition, I am a Research Assistant to Professor Richard Sander and have taken the opportunity to complete two research papers in seminars that touch on Executive Power and Environmental Law.

In sum, the wealth of my research assistant experiences at both the undergraduate and law school levels, my academic successes, extracurricular commitments, and summer experiences would make me a strong asset to your chambers. Attached please find a copy of my resume, transcript, writing sample, and letters of recommendation from Professor Hecht, Professor Michaels, and Professor Sander. Thank you for your time and consideration. I look forward to hearing from you.

Respectfully,



Matthew J. Connor

Matthew J. Connor

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EDUCATION

UCLA School of Law, Los Angeles, CA

J.D. Candidate, May 2022 | GPA: 3.59

Activities: Program on Professional Development, *Participant* (2020); Moot Court, *Competitor* (2020)
Journal of Environmental Law and Policy, *Managing Editor*
Journal of International Law and Foreign Affairs, *Production Editor*

Northwestern University, Evanston, IL

B.S., *magna cum laude*, Journalism, International Studies Honors Program, June 2016 | GPA: 3.8

Minor in Political Science | Certificate in Leadership

Honors: International Studies Honors Program | Dean's List (10 quarters)
AJHA Honorable Mention: Outstanding Faculty Paper, Outstanding Minorities Topic (2016)
Carlson Scholarship for Academic Merit and Outstanding Community Service (2014 – 2016)
Highly Commended, Global Undergraduate Awards (aka “Junior Nobels”), Ireland (2015)
Northwestern QuestBridge Scholar (2012 – 2016)

Honors Thesis: The Mosaic and The Melting Pot: Residential Integration in Toronto and Chicago

Leadership: Medill Undergraduate Student Advisory Council, *Co-Chair* (2014 – 2015)
Lambda Chi Alpha, *Vice President of Philanthropy and Outreach* (2014 – 2015)

Study Abroad: Doha, Qatar | Northwestern University (Fall 2014)

PROFESSIONAL EXPERIENCE

Summer Associate | *Emmett Institute on Environmental Law* | Los Angeles, CA May 2021 – Present

- Research and prepare memoranda on topics related to green spaces and racial equity.
- Draft papers and briefs that address various areas of environmental, land use, and water law.

UCLA Law Research Assistant | *Professor Richard Sander* | Los Angeles, CA January 2021 – Present

- Examine declines in demurrers in Los Angeles County cases since 2016 civil procedure reforms.
- Code significant civil cases on upwards of 100 variables to deduce potential causes of the drop.

Judicial Extern | *Chambers of Chief Judge Pallmeyer (ND-IL)* | Chicago, IL May 2020 – August 2020

- Drafted orders on matters ranging from employment discrimination to motions to dismiss.
- Assisted judge with deliberations on cases involving motions to transfer and public health measures.

Teach for America Corps Member | *Chalmette High School* | Chalmette, LA June 2016 – June 2019

- Raised math proficiency rates for students from 41 percent to 65 percent in first year.
- Taught ACT prep course and co-coached the debate team, which qualified for nationals.

Reporter | *Scripps Howard News Wire* | Washington, D.C. June 2015 – August 2015

- Reported stories using a variety of multimedia tools.
- Covered the White House, Supreme Court, Senate, House and D.C. Metro.

Producer, Video Reporter | *eNCA: Checkpoint* | Johannesburg, South Africa March 2015 – June 2015

- Shot stories, conducted interviews, wrote scripts; edited video packages using Final Cut Pro X.
- Worked in small team that created a full-length episode on rural education quality in South Africa.

Research Assistant | *Northwestern University* | Evanston, IL October 2013 – May 2014

- Co-authored award-winning research article with Professor Jon Marshall on Chicago’s Black press.
- Conducted interviews, transcribed interviews, following deadlines set by professor.

INTERESTS

Summitting mountains, reading award-winning books, cycling, and training for the 2021 Chicago Marathon.

REFERENCES:

1. Professor Jon Marshall, Northwestern University. Medill School of Journalism.
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 - a. Phone: 847-491-7450.
 - b. Email: r-roger@northwestern.edu
3. Principal (Ninth Grade Academy) Emily Boackle, Chalmette High School.
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University of California, Los Angeles
LAW Student Copy Transcript Report

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Student Information

Name: CONNOR, MATTHEW J
UCLA ID: 405444194
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Generation Date: June 09, 2021 | 08:19:02 AM
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Program of Study

Admit Date: 08/26/2019
SCHOOL OF LAW
Major:
LAW
Specializing in CRITICAL RACE STUDIES

Degrees | Certificates Awarded

None Awarded

Previous Degrees

None Reported

California Residence Status

Nonresident

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Fall Semester 2019

Major:
LAW

CONTRACTS		LAW 100	4.0	13.2	B+	
INTRO LEGL ANALYSIS		LAW 101	1.0	0.0	P	
LGL RSRCH & WRITING		LAW 108A	3.0	0.0	P	
TORTS		LAW 140	4.0	13.2	B+	
CIVIL PROCEDURE		LAW 145	4.0	13.2	B+	
LAWYERING REAL WRLD		LAW 160	1.0	0.0	P	
			<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
		Term Total	17.0	17.0	39.6	3.300

Spring Semester 2020

LGL RSRCH & WRITING	LAW 108B	2.0	0.0	P	
CRIMINAL LAW	LAW 120	4.0	0.0	P	
PROPERTY	LAW 130	4.0	0.0	P	
CONSTITUT LAW I	LAW 148	4.0	0.0	P	
LAND USE, PLAN, POL	LAW 165	1.0	0.0	P	
SPRING 2020: DUE TO COVID-19, THE SCHOOL ADOPTED MANDATORY P/U/NC GRADING WITH EXCEPTIONS FOR CERTAIN CATEGORIES OF CLASSES AND STUDENTS.					
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
	Term Total	15.0	15.0	0.0	0.000

Fall Semester 2020

ADMINISTRATIVE LAW	LAW 216	4.0	16.0	A	
BUSINESS ASSOCIATNS	LAW 230	4.0	13.2	B+	
ENVIRONMENTAL LAW	LAW 290	4.0	13.2	B+	
CALIF ENVIRNMNTL LW	LAW 513	3.0	12.0	A	
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total		15.0	15.0	54.4	3.627

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Spring Semester 2021

EVIDENCE	LAW 211	3.0	9.9	B+
LAND USE	LAW 286	4.0	16.0	A
PROFESSIONAL RESPON	LAW 312	2.0	0.0	P
VOTING RIGHTS	LAW 330	2.0	8.0	A
EXECUTIVE POWER	LAW 644	3.0	12.0	A

	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total	14.0	14.0	45.9	3.825

LAW Totals

	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Pass/Unsatisfactory Total	22.0	22.0	N/a	N/a
Graded Total	39.0	39.0	N/a	N/a
Cumulative Total	61.0	61.0	139.9	3.587

Total Completed Units 61.0

END OF RECORD
NO ENTRIES BELOW THIS LINE

UCLA School of Law

SEAN B. HECHT
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May 20, 2021

Dear Judge:

I write to recommend Matthew Connor for a clerkship in your chambers. Matt was a student in my seminar on California Environmental Law. Matt is energetic, thoughtful, and intelligent. He also has a strong passion for public service. As a teacher and a lawyer who worked in government prior to coming to UCLA many years ago and has been active in Bar activities, and as a former federal district court law clerk myself (Hon. Laughlin E. Waters, C.D.CA), I believe I have a strong sense of what it takes to succeed in this field. Matt has the qualities I would hope for in a young attorney. I recommend him very highly.

I enjoyed teaching Matt in my seminar. He asked good questions and often had insights that made the class discussion more interesting. He clearly took the reading and learning seriously, making the most out of the opportunity that seminar presented to dive deeply into difficult legal materials. In that class, I assigned weekly short reaction papers, and his papers always reflected careful thought and a high level of engagement with the reading material. He clearly took the class seriously and absorbed both the core ideas and the fine details.

Matt's final paper in the course was among the best in the class. Matt's research examined legal and policy issues relating to the promise of expanded rail service in Los Angeles, including complex sociological and economic issues relating to public transit. He identified specific ways in which public transit expansion has the potential to assist or burden low-income communities, and proposed several insightful policy ideas to enable transit to play a positive role. His analysis went deeply into the history of the transit system, and addressed complex legal and policy issues. His writing was clear and well-organized. He was self-starting, he got drafts in to me on time, he found the relevant sources and used them effectively, and he consistently used my advice to improve his work.

Matt was a joy to work with as he developed his term paper. We had multiple conversations in which we discussed his ideas and my feedback on his work in progress; he received feedback well, and made me think differently about some of the ideas he presented as our discussions progressed. He was always receptive and thoughtful, and his final product was well-written and well-researched. He dug into fine details, and used those details effectively to underpin his thesis. In the end, his paper was one of the two or three best in my 20-student seminar. I am confident the skills he displayed in his work on this term paper—intellect, perceptiveness, curiosity, strong work habits, attention to detail, and ability to take feedback well and incorporate it into his products—will translate into practice.

Finally, I have enjoyed getting to know Matt. He is personable and thoughtful, and has a good sense of humor. His classmates get along well with him. I think he will be an excellent colleague in any group of attorneys and advocates.

May 20, 2021

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In sum, I am convinced that Matt has the skills, the character, and the motivation to be a top-quality lawyer. He will be an asset to your chambers, or to anyone who hires him. Please feel free to contact me to discuss Matt further.

Sincerely,

A handwritten signature in black ink that reads "Sean B Hecht". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Sean B. Hecht

UCLA School of Law

RICHARD H. SANDER
DUKEMINIER DISTINGUISHED PROFESSOR OF LAW
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May 12, 2021

Dear Judge:

I am writing in enthusiastic support of Mr. Matthew Connor's clerkship application to your chambers. Matthew is a very solid and strong student whom I have gotten to know well in two settings, despite the conditions imposed by the pandemic.

Matthew was my student in first-year Property last spring. During the first six weeks of the semester, when UCLA was operating under normal conditions, Matthew stood out as someone well-prepared in class, engaged and thoughtful in discussions. When teaching moved online, and especially during the worrisome early weeks of widespread closures, the average level of engagement among my first-year students declined a good deal, but for some students, including Matthew, it actually increased. My office hours became, in essence, an online seminar for around ten students who were diving deeply into the material and wanted to explore it further, and Matthew was consistently part of that group. In place of the normal essay final examinations, I split my testing into two parts: a timed, multiple-choice final, and a group project in which teams of three students collaborated on three essays, which we then discussed. Matthew did an excellent, "A-level" job on the multiple-choice exam, and came across as the quiet leader of his essay group, helping the other students to produce a very strong set of essays. Like everyone else, he received a "pass" grade for the course, but under ordinary circumstances, his work would have placed him among the top half-dozen students in a class of eighty.

Midway through his second year, I was able to arrange for Matthew to work with me as a research assistant, through the UCLA law library's "RA" program. (The library trains students on a wide range of research skills commonly useful to faculty, and then places them in faculty-student collaborations that seem like a good fit.) Over the past four months, Matthew has worked with me on a study of the Los Angeles Superior Courts. This is part of a larger project in which I am collaborating with three judges and a couple of other scholars to develop systematic data on "major civil" cases filed with the Los Angeles Superior Court, partly to understand patterns of litigation, but mainly to evaluate various types of "experiments" in civil procedure that have been launched over the past decade.

Matthew's work focused on a 2016 reform that required a defense lawyer in a civil case to "meet and confer" with opposing counsel before filing a demurrer. The theory behind the reform was that demurrers usually end up being a "tactic" rather than a "solution" to a civil case; even if the demurrer is justified, the defect in the plaintiff's complaint can usually be cured by an amended filing. A "meet-and-confer" process could, in principle, get the parties to focus on the substance of the complaint, often lead to plaintiff-initiated amended complaints, and thus improve the speed and lower the cost of ultimate case resolution. In the project, Matthew learned how to "measure" dozens of different aspects of a civil case, and he coded a couple hundred civil cases where demurrers were filed before and after the 2016 reform. (Our findings thus far are that the "meet-and-confer" requirement

May 12, 2021

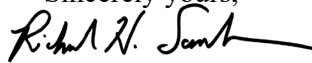
Page 2

had a modest but significant effect in reducing demurrers.) Matthew's work was impeccable; he was conscientious careful, and made helpful suggestions to the larger team. I would guess that through this project, he has learned more about court systems and procedure than the typical clerkship applicant.

In person or in a videoconference, Matthew is calm and friendly. He comes across as both low-key and actively engaged. He is easy to work with and always up for a challenge. His written work – of which I have only seen a modest amount – is clear, thoughtful, and well-organized. In short, Matthew is a very solid candidate for a clerkship, and will repay full consideration.

If I can be of any further assistance in your deliberations, please do not hesitate to call (310-206-7300) or email me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Richard H. Sander". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard H. Sander
Dukeminier Distinguished Professor of Law



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May 3, 2021

Dear Judge:

Matthew Connor, one of my best students this year, is applying for a position in your Chambers. He merits my very enthusiastic endorsement.

Matthew was a standout performer in my Fall 2020 Administrative Law class. In normal times and under normal conditions, all of my students are “on call” every day. Given the stresses and logistical challenges of distance learning during a pandemic, I’ve relaxed those expectations considerably, relying instead exclusively on volunteers. Predictably, that decision resulted in uneven participation. But one of the fortuitous byproducts of such uneven participation was that I ended up hearing a whole lot from Matthew. Matthew, to his great credit, was a tireless, generous, and unfailingly purposeful contributor. He distinguished himself by proffering sharp, creative, and generative insights—insights that revealed a strong command of the assigned materials and a curiosity about the policy implications of given cases, statutes, and regulations.

Matthew supplemented his in-class contributions by being a regular during our weekly office hours (which were likewise conducted via Zoom). Here, Matthew was equally, if not more, impressive. He wanted to push harder on the policy questions that he raised in class. He wanted to try to reconcile the often internally inconsistent lines of cases. And, attentive as he was to the world around him, he wanted to discuss how administrative law operates in times of crisis. Needless to say, it was an absolute pleasure to converse with him on these topics, and I particularly appreciated how his questions and comments sparked reactions from the other students who also “dropped in” for office hours.

Our final exam tested Matthew and his classmates on everyday administrative law doctrines, on the constitutional status of administrative agencies, on the design of agencies, on the virtues and vices of private regulatory schemes, and on the interplay of law and politics in rulemaking and enforcement proceedings. Matthew’s answers were rigorous, thoughtful, and well crafted. Among other things, he acknowledged the limitations and weaknesses of his arguments and showed great originality (and dexterity) in puzzling through a question on what constitutes a good judicial opinion (and whether there are special details, characteristics, or methodologies we ought to expect from good *administrative law* judicial opinions in particular).

Matthew and his classmates’ exams were incredibly strong, arguably the strongest batch I’ve had in the ten or so times I’ve taught the course. For his work constructing clear, insightful, and nuanced essays, Matthew received one of the handful of As I awarded (among the fifty-odd students in the class).

* * *

May 3, 2021
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Given my experiences with Matthew in Administrative Law, I confess that I am a little surprised that Matthew's overall GPA isn't higher. In fairness, he has had only two semesters of grades to work with—a function of our treating all Spring 2020 classes as Pass/Fail. (His Spring 2021 grades should be available by the time you review candidates in June.) More to the point, because Matthew was stunningly strong in my class—a class with a well-deserved reputation for being one of the most challenging of our offerings—I'm inclined to give particular weight to the fact that his upward trajectory is an undeniably steep one.

Clearly, I like Matthew and think you will too. He's sharp, responsible, mature, and easy to converse with. I have no doubt that he will be a fast learner and a thoughtful interlocutor in chambers. For these reasons, he merits my enthusiastic endorsement.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jon Michaels". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Jon Michaels

Matthew J. Connor

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WRITING SAMPLE COVER PAGE

Below, please find the first draft of an order I wrote during my judicial externship with Chief Judge Pallmeyer (Northern District of Illinois) last summer. This draft was completed before having received comments or feedback and has not been edited. At this point in litigation, the central issue between the two parties was whether “Company B” satisfied 28 U.S.C. § 1404(a) for its motion to transfer to be granted. After consulting with and receiving the permission of Chief Judge Pallmeyer, certain information, including the identities of the parties, has been changed.

Sincerely,
Matthew Connor

MEMORANDUM ORDER

Irish corporation Company A brought an action against Company B for (1) fraudulent inducement; (2) breach of contract; (3) breach of the duty of good faith and fair dealing; and (4) tortious interference with business expectancy. Defendant moves to transfer venue to the District of Lincoln pursuant to 28 U.S.C. § 1404(a). For the reasons set forth below, Defendant's motion is granted.

Background

Company A is an Irish private company. Its principal place of business is in Dublin, Ireland. Am. Compl. 1:6. Company A leases, sub-leases, sells, and purchases air transport vehicles. Am. 1:7. Company B is a Delaware corporation with its principal place of business and corporate headquarters in Chicago. Am. 1:8. Company B principally designs, assembles, inspects, tests, markets, distributes, and sells aircraft in Lincoln. Am. 1:10. Its 500 JET aircraft, which Company B suspended production of in January 2020, is the subject of this lawsuit. Am. 1:12.

Company A's allegations are based on the following. On January 10, 2014, Company A entered into a purchase agreement for 20 of Company B's 500 JET aircraft. Am. 3:5-7. Company B represented to Company A in meetings, marketing materials, and business proposals that the 500 JET would be airworthy, safe, free from design defects, and compliant with appropriate aviation regulations. Am. 2:8-10. The 500 JET was intended to be Company B's response to Airbus's A320neo. Am. 5:7-11. In 2011, Company B began designing the 500 JET as an update to the 737 Next Generation. Am. 5:19-20. It aimed to create the most fuel-efficient plane in its class without pilots needing to undergo additional simulator training to fly it. Am. 2:6-8. The original design was approved at Company B headquarters in Chicago, but all assembly of the 500 JET aircraft occurred in the Coastal Gem region of Western Washington. Mot. to Transfer 3:18-20.

On March 12, 2020 at the time of filing its first amended complaint, Company A had only received two of these aircraft. Am. Compl. 4:8-9. Company A alleges, in part from congressional findings, that Company B constructed its 500 JET fleet under a culture that emphasized assembly speed over safety in design. Am. 43:4-5. When wind tunnel tests revealed that the 500 JET was sometimes pitching up during extreme flight conditions, Company B embraced an unconventional solution for commercial aircraft. Company A alleges that as part of a rushed effort by Company B to retain market share against its rival, Airbus, the 500 JET was outfitted with a Maneuvering Characteristics Augmentation System (MCAS) to address the problem of the plane pitching up under extreme flight conditions. Am. 16:19-17:16. Company A alleges this was done in order to help speed the arrival of the 500 JET to Company B's customer base, in order to undercut the arrival of Airbus's new A320neo in the marketplace. Am. 5:14-20.

In implementing MCAS, Company B decided that pilots did not need to know about it or be trained on it. Am. 18:5. This would allow the 500 JET to earn a common type rating with existing 737 models. Am. 18:6. But facing continued difficulties in tests and simulations with the 500 JET, Company B later increased the power of its MCAS system, allowing the tail's horizontal stabilizer to move up to 2.5 degrees in 10 seconds – more than four times faster than what it was originally capable of – without informing the Federal Aviation Administration (FAA) of this change. Am. 20:12-17. Company B also removed the G-force threshold for activating MCAS, allowing MCAS to be triggered by just a single angle of attack sensor instead of two. Am. 20:4-6. In modifying its original MCAS system, Company B removed the multiple angle-of-attack sensor design and instead relied on a single angle-of-attack sensor to trigger the automatic corrective angling of the nose of the aircraft. Am. 48:18-21. This modification alone was against industry norms, regulations, and Defendant's own engineers. Am. 18:7-10. For comparison, Airbus uses three angle-of-attack sensors on the A320neo. Am. 23:4-5.

In June 2018, an internal Company B document stated that if a pilot took longer than just 10 seconds to react to an improper activation of MCAS, the result could be catastrophic. Am. 21:5-7. Company B chose to omit a description of MCAS from the flight crew operations manual (FCOM). Am. 21:9-10. Company A thus alleges that the culmination of these decisions by Company B contributed to the crashes of Lion Air Flight 610 on October 29, 2018 and Ethiopian Airlines Flight 302 on March 10, 2019. Am. 2:13-18. In the aftermath of these two crashes, many flight attendants, travelers, and pilots have said they will refuse to fly on a 500 JET. Am. 43:13-46:11. Company A therefore alleges that the 500 JET aircraft they agreed to purchase from Company B are now worthless. Am. 2:19-21.

Company A's allegations, in essence, are as follows. Company A alleges fraudulent inducement because Company B falsely represented to the FAA that the MCAS system was benign and rarely used. Am. 21:14-16. According to Plaintiff's amended complaint, it was unknown to Plaintiff at the time of the delivery of two 500 JET aircraft that they did not conform to the aircraft's type certificate. Am. 4:8-10. Plaintiff alleges that Company B controlled the certification process of 96 percent of the 500 JET, including on aspects related to critical safety features. Am. 7:7-9. Company A then says it acted in reliance upon Company B's misrepresentations and omissions. Am. 64:19-21. Company A alleges breach of contract for Company B not designing and manufacturing the 500 JET in accordance with FAA regulations and other pertinent U.S. federal aviation regulations for the type certificate it obtained. Am. 65:23-66:2. Plaintiff claims that Company B knew its modifications from the old 737 certification would require new simulator training for pilots certified on previous 737s because Company B planned to mislead the FAA in order to obtain non-simulator certification. Am. 15:7.

Also, Company A alleges Company B did not have an excusable delay for failing to deliver the aircraft in time. Am. 66:16-19. Company A alleges breach of the duty of good faith and fair dealing, arguing that Company B deliberately contravened the spirit of the contract knowing that its aircraft required additional training because of its MCAS system. Am. 66:23-26.

Plaintiff states that though Company B knew Company A planned to lease the aircraft, Company B already knew by 2012 that it would be unable to build an aircraft under its 737 amended type certificate that would have class-leading fuel efficiency, be airworthy, and not require additional simulator training as it originally claimed it would be able to do. Am. 16:9-19:1. Finally, Company A alleges tortious interference with a business expectancy by Company B because Company B knew or should have known that Company A planned to lease and sell the 500 JET planes. And instead of Company B taking careful precautions in designing the 500 JET, Company A states that Company B was motivated by greed, leading it to act unreasonably in dealing with Company A. Am. 43:4-6.

The issue at this stage of the case is whether Company B's motion to transfer under 28 U.S.C. § 1404(a) from the Northern District of Illinois, where its principal place of business is, to the District of Cadmium, where its manufacturing, assembly, and relevant marketing and contracting with Company A occurred, should be granted. Mot. to Transfer 1:16-18.

Discussion

On February 6, 2020, Company B filed a motion to transfer the case to the District of Cadmium under 28 U.S.C. § 1404(a). Mot. 2:8-9. Company B contends that all of the witnesses—including third-party witnesses—and all of the evidence are located in the District of Cadmium or overseas. That is, there are no relevant witnesses and no evidence pertinent to this case in the Northern District of Illinois. *Craik v. Company B Co.*, 37 F. Supp. 3d 954 (N.D. Ill. 2013) (ordering transfer of a case against B where underlying events involved commercial division in WA). A trial judge will consider all relevant contextual circumstances and make any factual findings that are necessary for determining venue issues. *In re LimitNone, LLC*, 551 F. 3d 572, 577 (7th Cir. 2008). In analyzing a motion to transfer, district courts have substantial discretion. *Research Automation, Inc. v. Schrader-Bridgeport Int'l, Inc.*, 626 F. 3d 973, 977-78 (7th Cir. 2010). The Moving Defendant bears the burden of proof on its motion to transfer. *Ace Hardware Int'l Holdings, Ltd. v. Masso Expo Corp.*, No. 11-cv-3928, 2011 WL 5077686, at *5

(N.D. Ill. Oct. 25, 2011). When deciding a motion to transfer venue, the court must accept as true all of plaintiff's well-pleaded facts in the complaint, unless they are contradicted by affidavits or other appropriate evidence from the defendant. *Plotkin v. IP Axess, Inc.*, 168 F. Supp. 2d 899, 900 (N.D. Ill. 2001).

Under § 1404(a), a court may transfer a case if the moving party shows that: (1) venue was proper in the transferor district; (2) venue and jurisdiction would be proper in the transferee district; and (3) the transfer will serve the convenience of the parties and witnesses; and (4) the transfer will serve the interests of justice. *Hanover Ins. Co. v. N. Bldg. Co.*, 891 F. Supp. 2d 1019, 1025 (N.D. Ill. 2012). The movant bears "the burden of establishing, by reference to particular circumstances, that the transferee forum is clearly more convenient." *Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 219-20 (7th Cir.1986). Because venue and jurisdiction would be proper in the District of Cadmium, the court therefore focuses on the convenience of the parties, the witnesses, and the interests of justice.

Convenience of the Parties

Like previous cases that have come before this court where the Defendant's motion to transfer has been granted, though Company B has its corporate headquarters in Chicago, it otherwise has no significant presence in Illinois. *F & G Scrolling Mouse, L.L.C. v. Microsoft, Inc.* 56 F. Supp. 2d 1005, 1007 (N.D. Ill. 1999). Several key witnesses that played a role in the material facts leading up to Company A's complaint live in Washington, and none of the witnesses live in Illinois. Company A is an Irish private company headquartered in Dublin that has no apparent ties to Chicago other than initiating this lawsuit.

To the extent that original copies of the contracts are relevant, Company B states that those are kept in Washington. Company B has also outlined that its relevant witnesses related to the contract with Company A, the marketing of the 500 JET in Company A's region, and the assembly of the 500 JET are all either located in the Coastal Gem region or overseas.

As far as the situs of material events related to the 500 JET aircraft and their sale to Company A, those events occurred either in Washington or overseas, not in Illinois. The alleged breaches of contract – failure to comply with regulatory requirements and the failure to deliver the airplanes without an excusable delay – relate to conduct that occurred in Washington. Company B argues the District of Cadmium is equally accessible to a foreign corporation. *Kjaer Weis v. Kimsaprincess Inc.* 296 F. Supp. 3d 926, 934 (N.D. Ill. 2017) (favoring transfer when either venue would require plaintiff to travel to prosecute).

Company A counters that Company B's fraudulence and breach of contract stem from its senior management and the culture of concealment fostered by its corporate headquarters in Chicago. Company A further contends that the location of Company B's employees and the location of relevant documents in the District of Cadmium is entitled to no weight under the law because of e-discovery. However, in previous cases, this court has ordered transfer when there are no relevant witnesses in this venue. *Puliot v. Bd. Of Trustees of Univ. of Illinois*, No. 18 C 6147, 2019 WL 1057316, at *3 (N.D. Ill. Mar. 6, 2019).

Plaintiff argues that Company B is just forum shopping. Company A points to ways in which Company B has purposefully availed itself of the Northern District of Illinois: it has funded scholarships in Chicago, sponsored the local air and water show, and moved to Chicago at least in part to take advantage of tax breaks.

The amount of deference to be given to a plaintiff's choice of forum varies. But such deference is reduced when there is a relatively loose connection between the chosen forum and the facts giving rise to the claim. *Doage v. Board of Regents*, 950 F. Supp. 258, 259–60 (N.D. Ill. 1997). This district has placed limited weight on a foreign plaintiff's choice of venue. *F&G Scrolling Mouse, L.L.C. v. IBM Corp.*, No. 99 C 1049, 1999 WL 311700, at *2 (N.D. Ill. May 13, 1999). Further, this is even more true when none of the relevant conduct occurred in the selected forum. *RAH Color Techs. LLC v. Adobe Sys., Inc.*, No. 18 C 733, 2018 WL 2393875, at *1-2 (N.D. Ill. May 28, 2018).

Here, Company A is headquartered in Ireland and did not negotiate any aspect of its purchase agreement with Company B in Chicago. Moreover, Company B, though having approved its design of the 500 JET at its headquarters in Chicago, did the actual production, testing, and manufacturing of its 500 JET aircraft in the Coastal Gem region in and around Liberty.

Company A has not shown that it will be substantially more convenient for the parties by having the case move forward in the Northern District of Illinois. The key witnesses identified by Company B that sold, marketed, and negotiated directly with Company A either remain employed with the company in the Coastal Gem region, are retired there, or live overseas. This factor, therefore, leans in favor of granting the motion to transfer.

Convenience of Witnesses

The convenience of witnesses is usually viewed as the most important factor in determining whether to grant a motion to transfer.” *First Nat. Bank v. El Camino Res., Ltd.*, 447 F. Supp. 2d 902, 913 (N.D. Ill. 2006). Company B’s main rationale for the transfer of the case to the District of Cadmium is that all of its relevant witnesses are in Washington, and none are in Illinois. This court has ordered transfer when all corporate witnesses live or work in the transferee venue and none of the corporate witnesses live or work in the transferor venue. *Puliot*, 2019 WL 1057316, at *3. Company B states that its board members played no role in Company B’s ultimate sale of 500 JET aircraft to Company A. Repeated travel of Company B’s employees from Washington to Illinois would be an avoidable and unnecessary burden.

In evaluating the convenience of the transferor court and the transferee court, courts consider: (1) the availability of and access to witnesses; (2) each party’s access to and distance from resources in each forum; (3) the location of material events; and (4) the relative ease of access to sources of proof. *Research Automation, Inc. v. Schrader-Bridgeport Int’l, Inc.* 626 F.3d 973, 977 (7th Cir. 2010).

Several key Company B employees involved in the contracts with Company A have since retired. They live in the Coastal Gem region of Washington. At this time, no witness to the contract negotiations lives or works in the Northern District of Illinois. Presence of important non-party witnesses in the proposed forum strongly favors transfer. *Baker v. Smith & Wesson Corp.* No. 18-CV-03847, 2019 WL 277714, at *3 (N.D. Ill. Jan. 22, 2019). Plaintiff points out that Defendant's test pilots who performed "jedi mind tricks" to get the 500 JET certified are in Texas and that it is a shorter flight from Texas to Chicago than from Texas to Liberty. Yet this is a small fact that favors denying the motion to transfer. On balance, two witnesses would be inconvenienced by slightly longer flights from Texas to Liberty but Defendant's larger amount of and most relevant witnesses would be benefitted from granting the motion to transfer.

Company A, on the other hand, contends that Company B's former CEOs and board members are vital witnesses. Yet Plaintiff identifies only a single Chicago-based board meeting about the 500 JET in 2011 that could tie its contract with Company B more directly to the Northern District of Illinois. That meeting occurred three years before the contract between Company B and Company A was executed. The mere presence of high-level personnel is generally insufficient to overcome a motion to transfer. More than a dozen Washington-based witnesses will be harmed by the case remaining in Illinois. No material witnesses will benefit from the case proceeding in Chicago. Company B contends that all of the witnesses—including third-party witnesses—and all of the evidence are located in the District of Cadmium or overseas.

Still, Company B's sales director for Company A's region at the appropriate time now lives in Russia. Neither district has subpoena power to compel this witness's testimony. Company B points out that the difference in flight itinerary times in transporting a witness from Moscow to Liberty instead of Moscow to Chicago may be negligible, or simply of no importance given the pandemic.